Annual Report

July 2002 to June 2003

104-00328/

ALBERTA LAW REFORM INSTITUTE

EDMONTON ALBERTA

ANNUAL REPORT

July 2002 to June 2003

ISSN 0229-6276
ISBN 1-896078-23-0

The Institute of Law Research and Reform was established in 1968 by the Attorney General of Alberta, the Governors of the University of Alberta and the Law Society of Alberta. The new name "**Alberta Law Reform Institute**" (ALRI) was adopted in 1989.

Funding for the Institute comes primarily from the Department of Justice and the Alberta Law Foundation. The University provides the Institute with office premises and many additional services, including a cash grant.

The objectives of the Institute set out in the Founding Agreement are as follows:

RESEARCH
To conduct and direct research into law and the administration of justice.

RECOMMEND
To consider matters of law reform with a view to proposing to the appropriate authority the means by which the law may be made more useful and effective.

PROMOTE
To promote law research and reform.

COOPERATE
For the purposes described above, to work in cooperation with the Faculty of Law of the University of Alberta, the Faculty of Law of the University of Calgary, and with others.

Program

The Institute's program is the delivery of law reform proposals. It does so by specific projects.

Project Selection Criteria

The rationale for the program content includes a number of component principles:

- each project must meet a perceived community need by providing a remedy for a deficiency in the law or in the administration of justice.

- a project must be one that neither the political process nor the administrative process is likely to deal with effectively.

- each project must be one that falls within the capability of the Institute, as a group of lawyers acting with the best available advice from segments of the public and from law and other disciplines.

- the total program must make contributions both to technical areas of law and to areas of law involving social policy.

We Need You

Law reform must be an interactive process. We consult closely and continuously with our intended audience, initially to identify appropriate projects, and later to obtain feedback on issues and proposals. The quality of our product is directly related to our ability to recognize the needs of our audience, and to provide a sensitive response to them.

Board:

C.W. Dalton, Q.C.
A. de Villars, Q.C.
A.D. Fielding, Q.C.
Hon. Judge N.A. Flatters
Dr. P. Hughes
W.H. Hurlburt, Q.C.
H.J.L. Irwin, Q.C.
P.J.M. Lown, Q.C.
A.D. Macleod, Q.C.
Dr. D.R. Owram
Hon. Justice B.L. Rawlins
Professor W.N. Renke
Mr. D.R. Stollery, Q.C.
Hon. Justice N.C. Wittmann, Chairman

Administrator:

Carol Fowlie

Support Staff:

Ilze Hobin
Jenny Koziar
Marlene Welton

Research Assistants:

Tania Bubela
Jeff Fixsen
Jason Golbey
Orrice Harron
Chelsea McKay
Jill Miles
Weston Rudd
Lisa Statt

Legal Staff:

Peter J.M. Lown, Q.C., Director
Suzanne Condlln
C.R.B. (Dick) Dunlop (*contract*)
Debra Hathaway
William H. Hurlburt, Q.C.
Janice Henderson-Lypkie (*contract*)
Cynthia Martens
Sandra Petersson
Janna Promislow (*contract*)
June Ross, Q.C.
(*seconded from Faculty of Law*)
Margaret A. Shone
Doris Wilson, Q.C. (*contract*)

The Institute's office is located at:

402 Law Centre
University of Alberta
Edmonton AB
CANADA T6G 2H5

Telephone: (780) 492-5291

Fax: (780) 492-1790

Internet Address:
reform@alri.ualberta.ca

Website:
http://www.law.ualberta.ca/alri

What We Do i
Program i

Who We Are iii

Acknowledgments ..... Page 1

The ALRI Process ..... Page 3
Projects – From Suggested Topic to Approved Project ..... Page 3
Categories of Publications ..... Page 4
Post Report Activity ..... Page 6

Publications Summary ..... Page 7
Final Report No. 87
Report on a Succession Consolidation Statute ..... Page 7
Final Report No. 88
Enduring Powers of Attorney: Safeguards Against Abuse ..... Page 9
Final Report No. 89
Limitations Act – Adverse Possession and
Lasting Improvements ..... Page 11
Consultation Memorandum No. 12.1
Commencement of Proceedings in Queen's Bench ..... Page 17
Consultation Memorandum No. 12.2
Document Discovery and Examination for Discovery ..... Page 21
Consultation Memorandum No. 12.3
Expert Evidence and "Independent" Medical Examinations .... Page 26
Consultation Memorandum No. 12.4 – Parties ..... Page 35
Consultation Memorandum No. 12.5 – Management of Litigation .... Page 41

Work in Progress ..... Page 45
Adverse Possession and Mistaken Improvements to Land ..... Page 45
Class Actions – Implementation ..... Page 46
E-Commerce ..... Page 48
Enduring Powers of Attorney ..... Page 48
Family Law Reform Project (Review of Domestic Relations Act) ..... Page 51
Marshalling Rules ..... Page 51
Matrimonial Property Act ..... Page 52
Rules of Court ..... Page 52
Standardized Limitation Periods for Actions on Insurance Contracts .. Page 54
Succession Consolidation ..... Page 54
Title Insurance ..... Page 54

Uniform Enforcement of Judgments Act & Court Jurisdiction and Proceedings Transfer Act ..... Page 55
Wills Act ..... Page 55

Year in Review ..... Page 57

List of Publications ..... Page 61
FINAL REPORT ..... Page 61
REPORTS FOR DISCUSSION ..... Page 71
ISSUES PAPERS ..... Page 73
DISCUSSION PAPERS ..... Page 74
RESEARCH PAPERS ..... Page 75
CONSULTATION MEMORANDA ..... Page 77
PRACTICE MANUALS ..... Page 79
OTHER PUBLICATIONS ..... Page 80

The Institute is able to carry out its role with the help of a vast array of volunteers and supporters. On a formal level we are indebted to the founding partners of the Institute – the Province of Alberta, the Law Society of Alberta, and the University of Alberta. Our funding comes from three sources – the Department of Justice, the Alberta Law Foundation, and the Office of the Vice-President, University of Alberta.

While the institutional ties are very important, the working relationship is significantly enhanced by the individuals who give encouragement and support to ALRI. It is appropriate to mention by name — the Honourable Dave Hancock, Q.C., Minister of Justice; Kenneth G. Nielsen, Q.C., Past-President and Cheryl C. Gottselig, Q.C., President, Law Society of Alberta; Don Thompson, Executive Director, Law Society of Alberta; and Dr. Doug Owram, recently retired Vice-President and Provost, University of Alberta.

This year saw the end of an era at the Alberta Law Foundation, with the retirement of Executive Director, Owen Snider. His blend of supervision, encouragement, support, and constructive criticism came in a unique blend which was a perfect fit for the growth and development of the Foundation and the work of its grant recipients. We look forward to developing as constructive a relationship with his successor, Mr. David Aucoin. We acknowledge with gratitude the support of the Alberta Law Foundation's Board of Directors Chair, Mona T. Duckett, Q.C.; Executive Director, Owen Snider; and Administrative Assistant, Diana Porter.

Our extended legal community contributes greatly to our work, and the Legal Education Society of Alberta and Canadian Bar Association (Alberta Branch) are essential partners in law reform. We acknowledge with gratitude the constant assistance of Hugh Robertson, Q.C., Executive Director and Paul Wood, Director of Continuing Education of the Legal Education Society of Alberta; as well as Tom Achtymichuk, President and Terry Evenson, Executive Director, CBA (Alberta Branch).

This has been a particularly heavy year due to the demands of our Rules of Court Project. Staff and Board have been called on for additional time and effort, which has been given generously. In addition, we acknowledge the time of the members of our working committees, who have met on numerous occasions over the last year. Almost all of the 100 requests for participation were met with enthusiastic consent.

We have relied heavily on our research students, given the increased work load, and they have responded well.

Law Reform is a participatory process, and we pay tribute to all those who by research, analysis, consultation, and contribution, add to the value of our proposals.

Projects – From Suggested Topic to Approved Project

Through various sources, potential topics for research and law reform are brought to the attention of the Director. The Director and Counsel review and categorize the topics and Counsel identifies the critical research issues. Topic descriptions are prepared and presented to the Board for information and comment. The four general phases are:

1. **Gather suggestions**
   - Thumbnail sketch of topic

2. **Gauge interest of community and urgency of topic**

3. **Business Plan for Topic**
   - Resources
   - Time
   - Completion

4. **Board Approval of Project**

Once the project is approved and assigned, a number of features take on significance.

A Collaborative Approach

A project is a collaboration that requires the ALRI Board, the Project Management Committee, the Project Advisory Committee, Counsel and Administrative staff to develop and manage the project cohesively. The Project Management Committee is chaired by a Board member with a second Board member appointed to the committee. The Director assigns Lead Counsel and Co-Counsel. The Project Advisory Committee is established and populated with lawyers, representatives of interested organizations and members of the public.

Regular Progress Reporting

Progress reports should be available for the Project Management Committee, the Director and other interested parties on a regular basis. At critical stages the reporting frequency may be increased. Progress reports must provide the Project Management Committee with a working understanding of the overall plan and the progress made against the plan.

A Consistent Format

ALRI has a preferred method of presentation for its publications and for materials prepared for Board meetings by Counsel.

Implementation Objectives

Identification of potential implementation objectives begins at the Feasibility Study phase. These objectives continue to take shape as a result of discussion amongst the Project Advisory Committee members regarding the project/research issues. Planning for achievement of these objectives usually commences not later than the final third of the Project phase.

Categories of Publications

While we tend to use different types of reports at different stages, the format is not rigid. Normally research papers merely share the results of our work. For example, our report on Recognition of Rights and Obligations in Same Sex Relationships was intended primarily to inform the ongoing debate. On the other hand, our report on Referees reviewed the history and proposed a practical change which was later implemented.

Normally our reports for discussion or consultation memoranda provide all the necessary background information for the reader to provide an informed response. Occasionally we will either update or replicate that information in a final report so as to make the recommendations a more coherent whole. For example, our Final Report on Surrogate Rules was fairly brief because it was complemented by the Practice Manual which we prepared with the Legal Education Society of

Alberta. Cost of Credit Disclosure was complemented by the provisions of Part 9, *Fair Trading Act* and Cost of Credit Disclosure Regulations. Our reports on Arbitration, Limitations, and Trustee Investment Powers are much fuller, and the annotated versions of the draft statute have proven very useful in the implementation process, and in the education process for the Bar once the legislation has been passed.

Finally, it is important to note the volume of reports which are now housed on our website, which provides a single entry point to the compendium of ALRI publications.

The five main types of documents produced by the Alberta Law Reform Institute are:

Research Paper
- Shared Data and Research
- Early Release

Issues Paper
- Develops Policy Issues
  Outlines Possible Solutions
- Seeks Comment and Consultation

Consultation Memorandum
- Focussed Policy Issues
- Identified and Discrete Audience
- Seeks Comment Prior to Final Proposals

Report for Discussion
- Issues and Background
- Proposed Solutions
- Seeks Comment before Proceeding

Final Report
- Considered Position
- Draft Legislation
- Submission for Action

Post Report Activity

Our work does not end with the final report. Significant post-report activity is involved in:

- explanations to "client" departments,
- response to legislative and drafting requests
- assistance to implementation groups
- presentation to legal profession

While reports are under consideration, we carry out a monitoring role to ensure that recommendations are kept up to date and other developments are taken into account.

During this year ALRI issued three Final Reports as well as five Consultation Memoranda on the Rules of Court Project. The summaries are set out below.

Final Report No. 87
Report on a Succession Consolidation Statute

The law of succession in Alberta is scattered among many different statutes. Currently there are 93 provincial statutes that are entirely or partially relevant to some aspect or another of succession law. Some of this law is contained in separate statutes that deal exclusively with legal issues arising out of death (like the *Wills Act*). Some of it is contained in separate statutes that apply equally to situations involving the dead and the living (like the *Trustee Act*). There are also a great many individual statutory provisions that deal with the circumstances of death and succession in the specific context of a larger, comprehensive statutory scheme (like the *Workers' Compensation Act*).

Alberta is certainly not alone in having widely-dispersed succession law. Most Canadian jurisdictions have a similar situation. Three jurisdictions, however, have consolidated at least some of their core succession statutes into a single statute: Ontario, Prince Edward Island and (to a much lesser extent) Yukon.

Our Report advocates the consolidation of Alberta's core succession statutes into one Act. A single piece of consolidated legislation covering all the essentials of statutory succession law would be a convenient reference tool for the use of practitioners and the public. Rather than having to access several statutes, users would simply have to refer to one major piece of legislation. This will promote accessibility and ease of use of our statutory succession law.

To determine which statutes and provisions should be part of a consolidated Act, our Report uses three principles of selection derived from our analysis of the consolidated succession statutes found in other Canadian jurisdictions:

- Each selected legislative component must be relevant only to succession law. It must have no application to situations involving the living. Those "dual nature" statutes and provisions must continue to be easily located and used by persons who are not administering estates and this would not be the case if they were consolidated in a succession statute.

- Each selected legislative component must be independent, in the sense that its legal effectiveness is not dependent on its place in a wider, comprehensive statutory scheme. Nor should the comprehensiveness of a specialized statutory scheme be weakened by moving provisions to a succession statute.

- The succession statute should aim to consolidate succession law, not codify it. This means that the proposed statute will not be a "code" or exhaustive statement of the law in this area. There will continue to be other relevant succession provisions in other statutes.

Using these principles of selection, we recommend that Alberta's consolidated succession statute be mainly composed of the eight currently separate statutes that apply exclusively to succession law:

- *Administration of Estates Act*
- *Devolution of Real Property Act*
- *Family Relief Act*
- *Intestate Succession Act*
- *Survival of Actions Act*
- *Survivorship Act*
- *Wills Act*
- *Ultimate Heir Act.*

With two exceptions, we do not recommend consolidating all the many individual statutory provisions relating to succession that are found in comprehensive or specialized statutes. We advocate consolidating only a few independent provisions that can safely be moved from their current locations:

- section 47 of the *Trustee Act*
- selected sections from the *Law of Property Act*, Part 1 (Transfer and Descent of Land)

We also recommend that, when the government prepares the consolidated succession statute based on our narrative outline of its components, the government should also implement in that statute all the recommended reforms in the area of succession law that we have advocated in our reports since the late 1980s.

Appendix A of the Report contains our detailed research identifying all succession-related statutes and statutory provisions. Appendix B identifies Alberta legislation that is death-related but does not deal directly with succession issues.

Final Report No. 88
Enduring Powers of Attorney: Safeguards Against Abuse

The *Powers of Attorney Act* allows a donor of a power of attorney to provide either that the power of attorney will come into effect on the donor's mental incapacity or infirmity (a "springing" power of attorney) or that the power of attorney will continue in force despite the donor's supervening mental incapacity or infirmity (a "continuing" power of attorney). It classifies both springing and continuing powers of attorney as "enduring" powers of attorney ("EPAs").

An EPA gives the attorney control over some or all of the donor's property at a time when the donor, by definition, is unable to supervise the attorney's activities. The great majority of attorneys exercise their control for the donor's benefit, but a small number abuse their powers by misapplying or misappropriating property of the donor. Although small, the number is large enough to require additional safeguards against abuse.

The present safeguards against abuse of EPA powers are:

- an EPA must be in writing and must specifically provide either that it is to continue notwithstanding any mental incapacity or infirmity of the donor that occurs after the execution of the power of attorney, or that it is to take effect on the mental incapacity or infirmity of the donor.
- the donor's signature must be witnessed.
- if the donor does not designate a person to make a declaration that the don has become mentally incapable or infirm, two medical practitioners must make a written declaration.
- the *Powers of Attorney Act* provides that an attorney who has accepted an appointment has a duty to exercise their powers to protect the donor's interests during any period in which the attorney knows, or reasonably ought to know, that the donor is unable to make reasonable judgments in respect of matters relating to all or part of the donor's estate.
- the donor's personal representative or trustee or "any interested person" may apply to the Court of Queen's Bench for an order requiring an attorne acting under an EPA to pass accounts or for termination of the EPA.

The *Powers of Attorney Act* should be amended to provide the following additional safeguards:

- Either
  - a lawyer must sign a certificate that an EPA was signed by the donor o a specified date in the lawyer's presence separate and apart from the attorney and that the donor appeared to understand the EPA, or
  - a witness must swear an affidavit containing the same statements.
- When the donor becomes mentally incapable or infirm and the attorney intends to act under an EPA, the attorney must give notice of intention to act to specified family members whose whereabouts are, or ought reasonably to be, known to the attorney (unless excluded by the EPA) and to any person designated by the EPA to receive notice specified to family members who are not excluded by the donor in the EPA and designated persons being collectively referred to in this Report as "qualified persons"

- The attorney must prepare and keep up a list of property and rights over which the attorney takes control and a list of transactions involving the donor's property and rights.
- The attorney must allow qualified persons to inspect the EPA and the property and transaction lists at reasonable intervals and to make copies.
- If the attorney does not allow a qualified person to inspect the EPA and the property and transaction lists, the qualified person may ask the Public Trustee to direct the attorney to produce them, and, if the attorney does not comply strictly with the Public Trustee's request, the Public Trustee or the qualified person may apply to the Queen's Bench for an order to produce them.

It is the Alberta Law Reform Institute's (ALRI's) opinion that, with these additional safeguards, the *Powers of Attorney Act* will strike a proper balance between the interests of individuals

- in being able to appoint a trusted person of their own choice to administer their affairs on mental incapacity with the least cost and embarrassment, and
- in having reasonable safeguards against abuse of the powers given to attorneys.

Final Report No. 89
Limitations Act – Adverse Possession and Lasting Improvements

In the background material to the *Limitations Act*, it was decided to defer consideration of the law of adverse possession to a later date. The coming into force of the new *Limitations Act* in 1999 raises several issues regarding adverse possession and the related claim for lasting improvements to land under the *Law of Property Act*. This Report addresses the issues raised by the *Limitations Act*. An increasing number of reported cases in recent years makes it additionally appropriate to consider this area of law.

A. Scope

This Report considers three closely related claims that arise between an owner of land and certain persons found in possession of the land. The first claim is the owner's right to recover possession. The second claim arises when the owner fails to bring a claim to recover possession within the prescribed limitation period. This second claim, generally referred to as adverse possession, allows the person in possession to quiet title in his or her own name where the owner does not act in time. The third claim typically arises where the owner is still within time to recover possession but to allow the owner to do so may itself cause injustice. Thus, s. 69 of the *Law of Property Act* offers alternative relief where the person in possession has made lasting improvements to the land in the belief that he or she owned the land.

B. Objectives

Disputes arising from the ownership and use of land are inevitable. The law needs to provide an efficient and appropriate mechanism to resolve them, not only to determine the parties' interests in a current dispute but also to prevent the dispute from troubling future owners. Protecting future ownership implies that land can be transferred from the hands of the successful claimant. Consequently, transferability is a further objective the law must ensure. These objectives of protecting future ownership and ensuring transferability are key and guide the discussion in this Report.

From the outset it is relevant to note the argument that all disputes concerning land ownership could be resolved according to the land titles register. To hold that the owner always has the definitive claim would be an efficient mechanism for resolving all disputes. However, to do so would be contrary to the limitations principle that appropriate resolution demands timely resolution. A third key objective of this Report is, therefore, to prevent the revival of stale claims. Further, to resolve disputes on the sole basis of the register is an arbitrary approach that does not assess competing claims on their merit. Finally, adopting the register for this purpose is not supported by the core principles of land titles legislation and would, over time, produce detrimental results for the register itself with consequences for transferability, future ownership, and the revival of stale claims.

C. Adverse Possession

Claims to recover possession of land were first made subject to limitation periods in the 12th Century. With the early 19th Century enactment of a provision to extinguish an owner's rights when the limitation period expired, limitations legislation provided not only a mechanism for resolving disputes but also protected future ownership and, thereby, improved transferability. However, the later 19th Century enactment of a Torrens land titles system provided a second mechanism for resolving disputes, ensuring transferability, and protecting future ownership.

During the first quarter of the 20th Century, the Alberta courts and legislature arrived at an effective balancing of the potentially conflicting principles of limitations and land titles legislation. An owner's claim to recover land continued to be subject to a limitation period and, thus, registered land could be lost to an adverse possessor with a claim to quiet title. However, in order to protect indefeasibility, a purchase for value would give the new owner the benefit of a new limitation period. In this way, the courts gave effect to both limitations and land titles principles. The balance between the two statutory regimes was completed by enacting a bridging provision to authorise the Registrar to issue a new title to a successful adverse possessor and to cancel the former owner's title. Alongside the provisions of limitations and land titles legislation, common law criteria were used to determine when the owner had been dispossessed and additional events that would stop or restart the limitation period.

D. Lasting Improvements

The goal of protecting indefeasibility and giving priority to a purchaser for value will inevitably cause harm to the person in possession. In one case, the purchasers for value were entitled to a neighbour's residence and farm buildings. Though all parties thought the buildings stood on the neighbour's land, the land was, in fact, included on the certificate of title newly acquired by the purchasers. The neighbour's claim to quiet title by adverse possession was defeated by the purchasers' indefeasible title, leaving no remedy for the loss of his home. The response to this situation was to enact a provision that offered relief where a person had made lasting improvements to land in the belief that the land was his or her own, currently s. 69 of the *Law of Property Act*. The criteria for assessing

lasting improvements and mistaken belief are now well-established in the case law and courts have shown flexibility in crafting remedies.

Though s. 69 was not thought to be subject to a limitation period under the old Act, the *Limitations Act* intended to impose one. However, s. 69 must be recognised as an exception to indefeasibility and it has been so applied by the courts. Consequently, it is appropriate to narrow this exception with a limitation period so that future owners of land are not indefinitely subject to s. 69 claims.

E. Effect of the *Limitations Act*

The *Limitations Act* has produced two significant changes regarding the claims discussed in this report. First, under the *Limitations Act*, a claim based on a continuing course of conduct does not arise until the continuing conduct ends. Thus, a claim to recover possession, which formerly arose when the owner was dispossessed, is now postponed until the adverse possessor's continuing trespass ends. The practical result is a limitation period that effectively never runs. The same result arises with respect to claims under s. 69 of the *Law of Property Act*. While the *Limitations Act* intended to impose a limitation period on s. 69 claims, the existence of a continuing course of conduct again postpones the claim arising until the conduct ends.

Second, the *Limitations Act* has not continued s. 44 of the old Act which formerly extinguished an owner's rights in the land when the limitation period expired. The consequences of this change are not as severe as they might first appear. Though the owner's rights are not extinguished by the *Limitations Act*, s. 74 of the *Land Titles Act* will cancel the owner's rights where the adverse possessor has quieted title and applies for registration. Though there is a risk of reviving stale claims before rights have been cancelled under the *Land Titles Act*, the risk of revival is more effectively addressed within existing limitations principles and does not require the drastic measure of extinguishing rights outside of the *Land Titles Act*.

Finally, the *Limitations Act*'s transitional provision raises a problem of temporary significance. Both claims to recover possession and claims under s. 69

of the *Law of Property Act* would appear to fall under the two year discovery rule in the *Limitations Act*'s transitional provision. Though there is sufficient basis for a court to avoid an unjust result under the two year limitation period, it is appropriate to clarify the application of the transitional provision.

F. Recommendations

In order to restore the law's previous balance between limitations and land titles legislation, and in keeping with the objectives of ensuring transferability and protecting future ownership, this Report recommends as follows.

To avoid the effect of claims being postponed by a continuing course of conduct:

- Claims to recover possession of land should be subject to a ten year limitation period that runs from the time the owner is dispossessed.
- Claims under s. 69 of the *Law of Property Act* should be subject to a ten year limitation period that runs from the time the improvements are made.

To clarify the application of the transitional provision:

- Claims to recover possession of land should not be subject to the two year limitation period in the *Limitations Act*'s transitional provision.
- Claims under s. 69 of the *Law of Property Act* should not be subject to the two year limitation period in the *Limitations Act*'s transitional provision.

To avoid reviving stale claims after the limitation period has expired:

- Where an owner transfers land to a donee, the donee should become the successor owner of any claim to recover possession.
- Re-entry to recover possession should only be effective within the limitation period.
- The principle of acknowledgment should only be effective within the limitation period.

G. Planning Law Considerations

Where claims to quiet title and claims under s. 69 of the *Law of Property Act* extend to only part of the owner's land, a successful claim may effect a

subdivision. Subdivision approval will, therefore, be required before any changes may be noted on the register. Though subdivision approval may be refused this protects the public interest in the orderly development and use of land and may also guide the court in crafting remedies.

H. Misconceptions Regarding Adverse Possession

In the course of discussion, this Report also deals with a number of misconceptions regarding the operation of adverse possession. The first is that adverse possession is an exception to indefeasibility and fundamentally inconsistent with our land titles system. Though land may be subject to adverse possession, a purchaser for value will acquire indefeasible title. Consequently, adverse possession is not an exception to indefeasibility. Moreover, even if courts had allowed adverse possession to operate as an exception to indefeasibility, that result in itself would not be inconsistent with land titles registration. The land titles system operates with a number of express and implied exceptions to indefeasibility, including s. 69 of the *Law of Property Act*. Nor is it inconsistent with the land titles system to require land owners to act on their claims in a timely manner; the *Land Titles Act* itself imposes limitation periods. While the *Land Titles Act* is an immensely valuable tool, it is not the only law in our society. As the principles of the *Land Titles Act* and the *Limitations Act* are not in conflict, neither Act demands paramountcy.

The second misconception is that adverse possession amounts to land theft. In the extreme case, this will be true. However, as the law has evolved in Alberta adverse possession based on deliberate encroachment is rarely successful. Rather, in the typical case, the adverse possessor will have acted in the belief that he or she owns the land. Returning to the theft analogy, the adverse possessor lacks *mens rea*. Moreover, in such cases the adverse possessor will inevitably feel that it is his or her land that is being taken by another. In appropriate cases, adverse possession allows the register to reflect the long standing status quo of possession, as where the parties have always accepted that the fence accurately marked the boundary between their lands or where a 30 year-old transfer was never registered.[1] Finally,

---

[1] For a similar line of argument against characterising adverse possession as land theft see Ireland, Law Reform Commission, *Title by Adverse Possession of Land* (Report No. 67) (Dublin: Law Reform Commission, 2002) at p. 9.

a further point to consider is the basis on which the adverse possessor is able to quiet title. While the owner holds superior rights in the land, possession gives the adverse possessor superior rights against the rest of the world. However, the expiry of the limitation period will give the adverse possessor an immunity against the owner's claim to superior rights. Adverse possession is not a taking of rights that belong to the owner but rather the emergence of a distinct set of rights based on possession.

The third misconception is that an adverse possessor only acquires defeasible title if his or her claim is successful. This conclusion is based on the fact that the adverse possessor is not a purchaser for value and, thus, as with a donee, acquires only the interest that the owner had. However, the adverse possessor is not in the same position as a donee who takes an interest from the owner. Rather, as time passes, the adverse possessor will acquire immunity against claims being brought by anyone else with an interest in the land. Thus, while a donee's interest will be subject to a lien against the property, the adverse possessor's tenure on the land may have been sufficient to gain immunity against both the owner and the lien holder. Where the adverse possessor applies under s. 74 of the *Land Titles Act* to have the existing certificate of title cancelled and new title issued, the practical result will often be that the adverse possessor's title is indefeasible.

Rules of Court Project

Consultation Memorandum No. 12.1
Commencement of Proceedings in Queen's Bench

A. Commencement Documents

There are two basic types of court proceedings in the Court of Queen's Bench: actions and applications. Most stages of an action, including pleadings, discovery and trial, do not apply to an application, which is typically dealt with in a summary proceeding based on affidavit evidence. A blurring of the lines may occur: a trial

of questions arising on an application may be ordered, and an action may be disposed of by means of various forms of summary process. But the two forms of proceedings remain distinct and continue to be reflected in Canadian and other court rules.

Rule 6 provides for three types of commencement documents: Statements of Claim, Originating Notices and Petitions. There is also a special application procedure in Rules 394-395 under which proceedings may be commenced without the issuance of a commencement document.

The General Rewrite Committee is of the view that the distinction between actions and applications should be retained, as there are situations in which it is useful to commence a proceeding as an application. The Committee favours having two ways to commence proceedings: one for actions and one for applications. The familiar terms, "statement of claim" and "originating notice," should be retained.

The Committee proposes to discard the archaic petition, and provide that in circumstances previously calling for the use of a petition, applications should be commenced by originating notice. Similarly, the special procedure in Rules 394-395 should be dispensed with, and applications formerly brought under this procedure should be commenced by originating notice.

The Committee proposes that there should be three situations in which an application may be commenced by originating notice:

(1) where a statute or rule explicitly or implicitly authorizes it;

(2) where there is unlikely to be a substantial dispute of fact;

(3) where there is no one to serve as respondent.

These are alternative categories. Originating notices can be used in categories (1) and (3) even if there are facts in dispute. However, the existence of facts in issue may cause the court to exercise its discretion to direct the trial of a question arising in an application.

B. Place of Commencement

Rules governing the place of commencement of an action within a jurisdiction determine one aspect of civil venue. Canadian rules regarding civil venue are "far from uniform". Limits on the place of trial are more common than limits on the place of commencement of proceedings. Venue rules determine presumptive venue by relying on varied grounds, including where the subject of an action is situate, where the defendant or both parties reside or carry on business, or where the cause of action arose. However, all provinces provide for court discretion to change venue where the circumstances make this appropriate.

A consideration of venue rules entails a determination of what aspects of venue, such as place of commencement or place of trial, should be regulated, and on what grounds.

The Committee proposes that Rule 6.1 (place of commencement) and Rule 237 (place of trial) be rolled into a single provision that would contain reference to the dual residence of parties as currently found in Rule 6.1 and to the location of land as found in Rule 237. The place of commencement should govern applications and trial. The court should continue to have overriding jurisdiction to alter venue in appropriate circumstances.

C. Service Within Alberta

Service of process has traditionally performed two functions, both of which should be taken into consideration when reflecting on the adequacy of service rules:

1. The court acquires territorial jurisdiction over persons at common law by serving them in accordance with its procedural law. Jurisdiction may also be based on consent or submission.
2. Service provides affected persons with notice of proceedings and an opportunity to be heard.

In a series of decisions dealing with conflict of laws issues, the Supreme Court of Canada has ruled that there is a constitutional limit on the territorial jurisdiction that may be granted pursuant to provincial legislative authority: there must be a "real and substantial connection" between the territory and the litigation.

The rules require personal service of documents by which a proceeding is commenced. Alternative methods of personal service are provided, and non-personal methods of service for documents not required to be served personally. Substitutional service may be ordered when prompt personal service is impractical. Technically defective service may be "deemed good and sufficient" when this is appropriate.

The Committee proposes providing for an alternative form of personal service on individuals by leaving a document with an adult person residing at the individual's place of residence, and mailing another copy to the individual at that address. This form of service could save significant expense by eliminating the need for substitutional service orders in these circumstances.

The Committee proposes that the provision for service by "double registered mail" be eliminated. "Double registered mail" is no longer provided by Canada Post. While it is still possible to obtain a receipt signed by the recipient of mail, this is a more involved process, and it is a frequent occurrence that plaintiffs who serve in this fashion do not obtain such a receipt, so that their "service" is ineffective. This creates administrative problems for the court and wasted time and expense for plaintiffs. In addition, there are reasons to believe that this form of service is not particularly effective in providing affected persons with notice of proceedings and an opportunity to be heard. The Committee's view is that the alternative form for serving individuals by leaving documents with an adult at their residence and mailing the documents to them at that address would be a more effective form of service, and a suitable substitute for service by "double registered mail".

The Committee proposes retaining the substitutional service rule, with minor changes, and adding a rule regarding applications to deem service good and sufficient, to reflect the actual practice.

The Committee does not propose a special provision for service by e-mail. Such service can be effected under current rules provided it is accepted. Solicitors can accept service in any form.

D. Service Outside Alberta

The constitutional limit on the territorial jurisdiction that requires a "real and substantial connection" between the territory and the litigation is a particular concern regarding grounds for service *ex juris*.

As pointed out in a number of comments from the bar, Alberta's rules stand out from those of most provinces by requiring a court order prior to serving outside the province. Most commentators felt that such service should be permitted without a court order.

The Committee proposes that a court order should no longer be required for service outside the province in specified circumstances similar to those now listed in Rule 30. This is the dominant approach in Canadian rules. The specified circumstances make a presumptive case for a real and substantial connection between Alberta and the litigation. Removing the requirement for a court order will save time and expense. The Committee also proposes that the rules should provide for court authority to authorize service out of Alberta in other, unspecified, circumstances. This, too, reflects the dominant Canadian approach.

As to time for responding, the Committee proposes that 30 days be permitted for service within Canada, 45 days for service in the United States and 60 days for service elsewhere.

Consultation Memorandum No. 12.2
Document Discovery and Examination for Discovery

This summary highlights only some of the issues that the Committee discussed and the proposals which it reached. The complete discussion of all issues and Committee proposals is contained in the consultation memorandum.

Highlights of Document Discovery Issues

One issue the Committee considered is that of timelines for filing and serving an affidavit of records and the penalties for failing to comply with the rules in this regard. During consultations there was mixed reaction from the Bar about the current rules which require an affidavit of records to be filed within 90 days of filing of the Statement of Defence. The Committee has attempted to address the Bar's concerns in this regard by proposing that both the Plaintiff and the Defendant must file the Affidavit of Records within 90 days of filing the Statement of Defence. However, an express provision should allow counsel to agree to other time periods which may be shorter or longer than 90 days. Alternatively a court application may be made to extend or shorten the prescribed period. The Committee proposes that there be a specific onus on the party who failed to file the affidavit of records within the prescribed time to show why they should not incur a prescribed penalty. The rule should prescribe a default penalty, such as the current 2x Item 3(1) of Schedule C. The rule should state that the court has discretion to either increase or decrease this amount in the circumstances.

Another issue concerns the appropriate scope of discovery of records. In 1999 the rules were amended to provide that only "material and relevant" documents needed to be produced (and only material and relevant questions need be answered at examination for discovery). The Committee ultimately concluded that it is not desirable to return to the former test of relevance. The most common comment heard during consultations about the "material and relevant" test was that it is being ignored; fewer people indicated that it causes problems. The Committee proposes to keep the present test for "material and relevant". In order to address the concerns expressed about the potential for non-disclosure, the Committee proposes that there be more severe consequences for failing to produce a record which ought to have been produced. Presently the primary consequence of failing to produce a record which ought to have been produced is in Rule 197, which provides that a party may not use a record in evidence if it has not been produced previously unless the Court is satisfied that there is a good reason for the non-production. The Committee suggests that further express consequences be implemented to bring home the gravity of breaching the duty of full and proper disclosure of records.

The Committee also considered whether insurance policies should be disclosed and produced. This is a requirement in several other Canadian jurisdictions but is not required in Alberta. While it is recognized that there may be benefits to requiring disclosure of insurance policies in motor vehicle accident actions, the Committee did not favour a general requirement of disclosure of insurance policies. At this time the Committee proposes that there be no requirement that contents of insurance policies be disclosed.

An issue that many members of the Bar raised is how should records be described in the affidavit of records. The Committee suggests that the rules should require some description of producible documents. In addition to the present requirements in the rules, the Committee proposes that non-privileged documents be enumerated in a convenient order and a short description of each be included in the affidavit. While the Committee acknowledges that there are problems with the current "bundling" of producible records, bundling may be the most efficient and effective manner of describing certain types of documents. The Committee proposes that the rules specifically set out when a group of documents may be described as a bundle in an affidavit of records, similar to the requirements in the Federal Court Rules. Parties may treat a bundle of documents as a single document if

(a) the documents are all of the same nature; and
(b) the bundle is described in sufficient detail to enable another party to clearly ascertain its contents.

The Committee is of the view that records over which privilege is claimed should be described in the affidavit of records with some particularity. The description should indicate the specific reason for which privilege is claimed for each document except where such a description will risk loss of privilege. These reasons would include that the document has been prepared in anticipation of, or for the purpose of, litigation; that the record is related to legal advice between counsel and the client, thus being subject to solicitor-client privilege; or that it is "without prejudice" communication between the parties in the course of settlement negotiations. The difference between the common practice today and the Committee's proposal is that each record must identify the ground upon which

privilege is claimed, rather than having only general statements of the grounds o privilege which do not correspond with specific records.

The Committee also proposes that the implied undertaking of confidentiality of information produced or given through the discovery process, including both production of documents and information gained from examinati for discovery, be stated specifically in the rules.

Examination for Discovery

The Committee considered the question of who should be subject to examinatio for discovery. The Committee proposes a slight extension of the present rules. There will remain a right to discover an appointed corporate representative, officers, employees and former employees. Additionally, persons who may not b actual employees, former employees or officers of a corporate party, but who ha the best direct knowledge of matters in issue as a result of performing duties for the corporation (excluding experts hired for the purposes of the litigation) regardless of the legal characterization of their relationship to the corporation, should also be discovered. This last group may be discovered by consent of the parties or by leave of the court. This is consistent with the direction taken in rece case law. Permitting discovery of those who have the best knowledge of matters issue will facilitate disclosure and exchange of relevant information, which is on of the primary purposes of discovery. This proposal also reflects the changing nature of employment in Alberta. Many "consultants" or "independent contracto now perform services for corporations which in the past would have been performed by employees or corporate officers who would have been subject to discovery under the rules.

The Committee also proposes that the rules specify an express duty for th corporate representative to inform him/herself prior to discovery. This is in response to many comments that appointed corporate representatives often atten at discoveries unprepared and uninformed about matters in issue.

The Committee proposes codifying the method prescribed in case law for having the corporate representative adopt the evidence of employees, former

employees, officers and persons who performed services for the corporate party (discussed above) in order to be read in at trial.

One innovation which the Committee suggests is incorporating procedures for using written interrogatories as an optional method of examination for discovery. Though written interrogatories are being used currently to some extent, the Committee feels that it would be useful to have a set procedure governing their use. A proposed set of procedures for using written interrogatories is included in this memorandum.

Due to the increasing use of interpreters in cross-examinations, discovery, and at trial, the Committee is of the opinion that the rules should specifically address the use of interpreters. The Committee proposes that a party requiring an interpreter should give reasonable notice of this need to the party conducting the examination or the cross-examination. The party doing the examination shall then, at their cost, provide the interpreter. This cost would be dealt with as any other disbursement at the conclusion of the litigation.

The Committee proposes that the rules specify an ongoing duty for a person to correct answers given at discovery in writing forthwith if they determine that the answer they gave is incorrect. The Committee was unable to reach a consensus about extending this obligation to providing further information if the answer given was incomplete, and seeks further guidance from the Bar on this issue.

The Committee suggests that answering undertakings be addressed in the rules. If a person at oral examination does not know the answer to a question at the time of the examination, they may undertake to inform themselves and provide the answer. The answers to undertakings should be provided within a reasonable time after the discovery, and the witness may be further examined on those answers.

A full discussion of these and other issues is found in the consultation memorandum.

Consultation Memorandum No. 12.3
Expert Evidence and "Independent" Medical Examinations

This summary highlights only some of the issues that the Committee discussed and the proposals which it has made. The complete discussion of all issues and Committee proposals is contained in the consultation memorandum.

A. Highlights of Expert Evidence Issues

1(1) What timelines should there be for the exchange of expert reports?
Although the Committee discussed the question of timing of expert reports, it makes no specific proposal, as a proposal regarding the timetabling of all aspects of litigation will be forthcoming shortly from the Management of Litigation Committee. This proposal takes the approach that the timing of expert report should follow discovery, rather than working backwards from the date of trial.

1(2) Should the reports be exchanged simultaneously or sequentially?
The Committee reached a consensus that expert reports should be exchanged sequentially. This is the more common method utilized in Alberta presently and most counsel are comfortable with this process. Simultaneous filing is inefficient as it requires unnecessary speculation on the contents of the expert report from the opposing party. This can lead to a party including matters that are not really in issue in the initial expert report, which can create additional delay and increase costs of the expert opinion. Having sequential exchange should assist parties to focus on the actual matters in issue for which expert opinions are required. While superficially sequential exchange may appear more cumbersome than simultaneou exchange, overall it is the most efficient way of identifying issues which ought to be the subject of expert reports and responding to the initial expert opinions.

With the sequential method, it is appropriate for rebuttal reports to raise new issues not raised in the primary report in addition to addressing matters arisin from the primary report. It would also be appropriate for the rules to provide for surrebuttal to respond only to new matters arising from the rebuttal report.

2. What sanctions should there be for failing to abide by timelines for expert reports?

Failing to comply with timeliness in the exchange of expert reports has long been a problem and has contributed to the delay which is a common concern with the litigation process. Sanctions such as refusing to admit the report into evidence, costs, or adjournments are effective if enforced by the courts. Providing for new sanctions will likely not resolve the problems of non-enforcement. The Committee proposes that the current rules regarding sanctions for non-compliance with rules governing the exchange of expert reports be retained.

3. Should there be prescribed criteria for the form of expert reports?

It was generally agreed that standardizing the format or prescribing minimal standards for the content of expert reports has many benefits. Doing so may assist in ensuring that expert reports provide useful and complete information to the court. A draft list of guidelines has been attached as an Appendix to this memorandum. Some of the matters suggested in the draft Guidelines include, inter alia:

- An expert's written report must give details of the expert's qualifications, and of the literature or other material used in making the report.
- All assumptions made by the expert should be clearly and fully stated.
- The report should identify who carried out any tests or experiments upon which the expert relied in compiling the report, and give details of the qualifications of the person who carried out any such test or experiment.
- There should be attached to the report, or summarized in it, the following:
  (i) the facts, matters and assumptions upon which the report proceeds; and
  (ii) the documents and other materials which the expert has been instructed to consider.
- Where an expert's report refers to photographs, plans, calculations, analyses, measurements, survey reports or other extrinsic matter, these must be provided to the opposite party at the same time as the exchange of reports.
- The expert should make it clear when a particular question or issue falls outside his or her field of expertise.

- Where an expert witness who has prepared a report believes that it may be incomplete or inaccurate without some qualification, that qualification must be stated in the report.

A full summary of the proposed guidelines is found in the Appendix.

4. How should objections to expert evidence be made?

Objections to either the expert or any portion of the expert report should be made as soon as possible. The requirements currently in Rules 218.14 and 218.15 that notice of objections to expert evidence with reasons be given within a reasonable period of time prior to trial should be retained. There was general agreement that some applications may be appropriately determined before trial, while others are better left to the trial judge, depending on the type of issue. The Committee considered whether it would be possible to have applications concerning the admissibility of expert evidence made to the trial judge prior to trial. However, this may be difficult as trial judges are often not assigned until just prior to trial. While having pre-trial applications may save trial time, the Committee was concerned that it may be difficult for a chambers judge to be fully informed of all of the relevant information to make a determination regarding the admissibility of the evidence, particularly if the issue concerns relevance. In most instances the trial judge is in a far better position to assess relevance. The proposal is to use the framework for notice of objections set out in Rule 218.14 for all objections to admissibility of the expert evidence. The initial court application to deal with the objection may be made at trial, or before trial in chambers. The pre-trial judge can decide the matter or refer the issue to the trial judge if the matter is more appropriately decided in the context of the trial itself.

5. Should experts be required to testify at trial?

The Committee proposes to retain the current mechanisms whereby the parties may replace oral expert testimony with a written expert report upon notice. Once an expert report has been served, other parties should have an option of requiring the expert to be produced either at trial, or even before trial, for cross-examination. There should also be an option of examining the expert before trial either in chief or cross-examination by consent of the parties or with leave of the court. Parties should be encouraged to use these procedures during case management meetings

or pre-trial conferences, as well as through education aimed at making counsel more comfortable with proceeding without viva voce expert testimony.

6. Should there be a limit on the number of experts each party may call?
While it may seem attractive to impose limits on the number of experts which may be called on a specific issue, the Committee had concerns about the practical application of such limits, particularly in determining what comprises a "single issue". A"single issue" often is comprised of discrete aspects that may involve different areas of expertise. Limiting the number of experts to one per issue may create more litigation than it eliminates if counsel disagree on what comprises an issue. The Committee's initial opinion is that the current Rules provide adequate safeguards limiting the number of experts that can be called. Mechanisms such as the present Rule 218.1 which requires that advance notice be given of the experts to be called at trial together with a summary of their evidence allows parties to evaluate the propriety of the other side's experts. A party must give advance notice of any objection to the propriety of a particular expert, and an application may be made either prior to or at trial to determine whether an expert is necessary. The Committee proposes to retain these types of limitations on expert evidence rather than imposing *prima facie* limits on the number of experts which may be called. However, there is currently a limit in the Very Long Trial rules of one expert per party per issue without leave. As no comments have been received regarding the practical effect of this limitation, the Committee is interested in feedback from the profession as to whether this limitation is effective and should be retained, and perhaps extended to all matters where experts are involved.

7. Should the use of joint experts be required or encouraged?
While the Committee recognizes the perceived benefits of requiring parties to use single joint witnesses, it had doubts about the practical application of doing so. There was a concern that arguments concerning choosing and instructing the joint expert would cause extensive delay and result in numerous court applications. In the Committee's view requiring joint experts would likely cause more problems than it would solve. However, the rules should permit the parties to use a joint expert by consent or with leave of the court

8. Should the rules permit the court to appoint its own experts?

It was noted that court appointed experts are rarely used except in some family law matters where privacy and confidentiality are in issue. As the court prefers to let the parties run their own cases and there is concern about imposing expenses on parties, the courts are generally reluctant to appoint their own experts. However, there are times when court appointed experts can be useful, as noted above. The Committee proposes that the Rules regarding court appointed experts remain as they are.

9. Should the rules permit the court to appoint assessors or referees?

The Alberta Law Reform Institute published a "Report on Referees"[2] wherein it recommended increased use of referees. In the Committee's opinion, assessors or referees can be of assistance to the court if used properly. The Committee proposes to retain the rules governing assessors and referees, and consolidate these rules with the court appointed expert rules. The rules should clearly distinguish between the roles and functions of assessors, referees and court experts.

10. Should expert witnesses be examined for discovery? If so, what limits, if any, should there be on the scope of the examination?

The Committee had serious concerns about permitting a *prima facie* right to discover experts prior to trial. Problems identified by the Committee included the expense of examining the expert, the delay caused by the inevitable unavailability of many experts, and concerns about alienating experts by imposing the additional burden of attending at discovery. This last concern is particularly prevalent with experts who do not specialize in providing expert litigation advice but whose primary occupation concerns their own practices or businesses. The Committee also saw little benefit in pre-trial discovery of experts in light of the requirements that expert opinions be exchanged in a timely fashion prior to trial. Requiring experts to be present for discovery in addition to trial may be impractical and expensive, especially if experts are located outside of Alberta. As there may be circumstances where oral discovery of experts may be of assistance, the Committee proposes that the court may, on application, grant leave to discover

---

[2] Alberta Law Reform Institute, *Report on Referees*, Research Paper No. 18 (Edmonton: Alberta Law Reform Institute, February 1990).

experts in any action (other than one falling in the streamlined actions) rather than limiting the procedure to discovery in Very Long Trials. The rules should specify this procedure is intended for exceptional circumstances and there should be a heavy onus on the person seeking the discovery to justify the necessity thereof.

11. Should Alberta adopt any of the recent innovations in expert evidence used in other jurisdictions?

It has been suggested that a pre-trial conference of experts may be a useful procedure. The experts could meet amongst themselves prior to trial, and try to reach areas of agreement and highlight areas where their opinions differ.

Requiring experts to meet amongst themselves prior to trial is an interesting idea, but is one that the Committee feels is unlikely to be embraced by the Alberta Bar. As with discovery of experts, the expense of a pre-trial conference of experts would be significant and it may be difficult to schedule, causing more delay than it would remedy. Another problem is that if the conference indicates that an expert is deficient, it is likely that a party will simply retain a new expert, resulting in additional cost and likely causing further delay. The Committee proposes that pre-trial conferences of experts should be an option for very long or complex trials only, and then only with consent of the parties or leave of the court.

A second suggestion emanating from foreign jurisdictions is referred to as the "hot-tub rule". This is an alternative method for calling expert evidence at trial by having a panel of experts give testimony, rather than having the experts called one at a time as part of a party's case. The Committee was not in favour of a requirement that expert evidence be presented in a panel format as it is a significant infringement on the parties' ability to call their evidence in the manner they so choose. Parties should be able to determine whether it is necessary to have all expert evidence in a trial heard together, or whether it is sufficient to do so in the traditional fashion. However, the rules should provide an option to have experts give testimony as a panel, or consecutively, with the consent of the parties or with leave of the court.

12. Should there be guidelines governing conduct of experts?

While the Committee believes that the notion of ethical guidelines for experts (as distinguished from the guidelines for the format for expert reports, discussed above) is laudable, it was questioned whether this should be done in the Rules of Court or left to the governing bodies of the particular professions within which the experts practice. There was doubt as to whether guidelines in the rules would have any real or practical effect on expert testimony, particularly in curing bias. Whether or not ethical guidelines are adopted, some Committee members thought they should be made available to the profession outside of the Rules, as it would be a "best practice" to send out the guidelines to experts to assist them in preparing for a court appearance. The guidelines could also assist junior members of the Bar in ascertaining their own duty and that of their expert witnesses.

The Committee concluded that there should be no ethical or conduct guidelines for experts in the Rules.

B. Highlights of "Independent" Medical Examination Issues

Currently Rule 217 in the Alberta Rules of Court permits the court to order a medical examination ("ME") of a person who claims damages in respect of injuries. This procedure was implemented to avoid trial by ambush. It also acts to remove privilege from medical reports which once attached to reports generated for the purposes of litigation.

13. When and by whom may an ME be requested? Should it be extended to an examination of any party if their physical or mental condition is in issue?

There are situations where a party's physical or mental condition may be put in issue in the pleadings outside of personal injury claims. If it is clear from the pleadings that any party's physical or mental condition is in issue, the Committee is of the view that the opposite party should be entitled to conduct a medical examination. This would also be consistent with the rules in most other Canadian jurisdictions. Therefore, the Committee proposes to expand the rules for court ordered MEs to any action where either the mental or physical condition of any party is placed in issue by the proceedings. However, the rule should contain a qualification similar to that in jurisdictions that specify that the physical or mental

condition must be relevant to a material issue to prevent parties from abusing the rule. Limiting court ordered medical examinations to situations where a party's physical or mental condition is a material issue should minimize the potential for abuse of the rule and prevent unnecessary examinations that could be prejudicial or embarrassing to a party.

14. Who should bear the cost of the attendance of the examinee's medical nominee?

There must be some procedure for ensuring that the medical practitioner's questions are fair and that the record of the examinee's answers is accurate. Having a medical nominee attend is one way of facilitating both of these objectives. Sending a nominee to the medical examination is expensive and it can be difficult to find a nominee in many cases. It is proposed that the rules specify that the examinee may choose to have a nominee attend at the ME at the examinee's expense, in the first instance. This expense may be recovered through costs at the end of the day if the examinee is successful, as would any other disbursement. The Committee also felt that there could be other options available to the examinee which would mitigate the expense and difficulties associated with nominees, such as having the procedure videotaped, discussed below.

15. Should the person being examined have the option of videotaping the examination?

As noted above, it is expensive to have a party attend the medical examination with a nominee and it is often difficult to schedule a nominee's attendance. It would be much less expensive to have the examination videotaped. Permitting the examinee to videotape the examination would also dispense with scheduling issues currently encountered with the nominee procedure. Videotaping the examination would also address other concerns about the partial nature of MEs, including the concerns regarding the questions that the examining medical professional may ask.

16. Should the distinction between "duly qualified medical practitioners" and "health care professionals" be retained in any or all parts of the rules?

Though the Committee proposes to expand the types of examinations which may be ordered under Rule 217, it felt that the types of medical examinations that a party may be required to undergo should be limited to those done by practitioners

who are subject to some form of professional regulation. To determine the appropriate types of medical practitioners who should be permitted to perform Rule 217 type examinations, the Committee referred to the *Health Professions Act*[3] which governs certain types of medically related professions which have governing bodies and specified regulations. Having reviewed the professions covered by this legislation, the Committee proposes that the rules permit the court to order MEs by the following medical professionals, even if the examinee may not intend to call such a practitioner as an expert at trial:

(i) Members of the Alberta College of Physicians and Surgeons;
(ii) Dentists and oral surgeons;
(iii) Occupational therapists;
(iv) Physical therapists;
(v) Registered nurses; and
(vi) Psychologists.

The Committee was of the opinion that it is not necessary to include all of the professions listed in the Health Professions Act, as many of these are not those who would normally conduct any sort of physical or psychological examination of a party in a civil litigation action.

17. Should the rules specify when the medical practitioner can call for other experts to assist in the examination?

It is proposed that the rules should not specify that a duly qualified medical practitioner may request others to conduct further examinations as this is a matter which should be decided on a case by case basis and should remain in the discretion of the court.

18. Must a defendant obtain their own medical report before being able to obtain the plaintiff's medical report?

This is an area where there is a battle between two principles: the sanctity of privileged records, being medical reports prepared in contemplation of litigation;

---

[3] R.S.A. 2000, c. H-7.

and the benefits of timely and efficient disclosure. The disparate treatment of this issue in other jurisdictions indicates that there are differing views as to which principle should be more dominant. There were no comments during consultation about problems with requiring a medical examination in order to trigger disclosure of otherwise privileged medical records under Rule 217, which leads to the Committee to believe that the current procedure under Rule 217 provides a suitable approach to the issue of disclosure of privileged medical records.

However, the Committee is interested in hearing the legal profession's views as to whether the requirement that an opposing party must first request an ME under Rule 217 to gain access to medical records is reasonable or necessary. An alternative could simply be to compel a party whose medical condition is in issue to produce all relevant medical reports, regardless of whether they were created solely for the purpose of litigation.

Consultation Memorandum No. 12.4
Parties

A. Deceased Person Without a Personal Representative

If a deceased person has no executor or administrator, litigation involving the estate can only occur if the court has appointed an administrator *ad litem* or other representative to act for the estate.

The court can appoint an administrator *ad litem* under certain statutes or the Surrogate Rules. Queen's Bench Rule 50(1) allows a court to appoint a representative for a deceased person who was interested in an existing or intended action or proceeding but who has no personal representative. However, Alberta case law interpreted this rule extremely narrowly by holding that it did not authorize the appointment of an administrator *ad litem*, i.e., a representative could not commence or carry on litigation on behalf of the estate. After the Alberta Court of Appeal noted in a recent case that Rule 50's wide wording was a trap for the unwary and should be clarified, the rule was amended in 2002 to provide explicitly

that a representative could represent an estate for all purposes of an action or proceeding.

The General Rewrite Committee agrees with this amendment and believes that Rule 50 has ongoing usefulness in the rules. However, it proposes a further clarification be made to the general notice provision of Rule 384(1). Notice of an application to appoint a representative under Rule 50 should be given to the beneficiaries of the estate or the heirs on intestacy if there is no will. These people are not parties and so the wording of Rule 384(1) needs to be broadened to include the giving of notice to any person or party who will be affected by the order sought.

B. Unincorporated Entities

1. Partnerships

Rules 80-82 govern when litigation may be carried on using a partnership's firm name, rather than having to litigate using the name of every partner. The General Rewrite Committee proposes a number of reforms in this area:

- A partnership should not have to carry on business within Alberta in order to sue or be sued in its firm name.

- Rule 80 should not specify the material date for determining who is a partner. Like its equivalent Ontario rule, it should be silent on this issue of substantive law and no longer refer to the relevant date as being when the cause of action accrued.

- Our rule should allow disclosure of partners' identities to be sought concerning any material time specified in the notice. If the partnership disputes the relevance of the date(s), it could dispute production by showing cause why the identities need not be produced.

- Our rules should also follow the Ontario model about how to sue individual partners separately. The partner (or former partner) should be served with the originating process and a notice alleging partnership at the material

time. However (unlike Ontario), the partner should be able to defend separately in all circumstances, without leave, unless otherwise ordered by the court.

- Our rules should explicitly allow use of the firm name in litigation between partnerships with common partners and between a partnership and its partners (this is currently implicit in our rules).

2. Sole Proprietorships Operating Under a Trade Name

Where an individual carries on business in Alberta under a trade name, Rule 83 allows a plaintiff to use that trade name when suing the individual. The General Rewrite Committee proposes a few changes to this rule:

- It should also apply to corporations who operate under a trade name.

- While the sole proprietorship must carry on business, it should not need to do so within Alberta for its trade name to be used in litigation.

- A sole proprietorship who is a plaintiff should also be able to sue using its trade name (not just be sued as a defendant). This would make explicit in our rules what is already implicit due to a recent Alberta Court of Appeal ruling.

3. Other Unincorporated Associations

Unlike some Canadian jurisdictions, our rules currently do not allow unincorporated associations not engaged in business (like clubs, not-for-profit groups, activist groups, etc.) to engage in litigation in the association's name. The General Rewrite Committee recommends that this continue to be the case and sees no need for change in this area.

C. Interveners

Public interest intervention allows non-parties to intervene in litigation, typically in *Charter*-related cases or other cases involving public issues. Many Canadian jurisdictions explicitly address intervention in their rules of court but Alberta is

one of the jurisdictions that does not, relying instead on the courts' inherent jurisdiction over practice and procedure to formulate our approach to public interest intervention.

Although Alberta courts function well in this area using inherent jurisdiction, the General Rewrite Committee believes that our written rules should reflect current practice by having an explicit intervention rule. The rule should facilitate the continued use by our courts of the common law test used in this area, without codification or alteration. Accordingly, the rule should provide that a court may grant leave to intervene to any person and that the proposed intervener must provide the kinds of information needed by the court to make its decision about whether to allow intervention. The rule should also expressly provide that intervener status may be granted subject to such terms and conditions, and with such rights and privileges, as the court directs. But the rule should not list the types of procedural terms to be set, so that a court will have as much flexibility as possible in crafting each intervener's participation to suit the needs of the case.

D. Persons Under Disability

Concerning parties who are under a legal disability and therefore cannot personally commence or defend litigation, the General Rewrite Committee makes the following proposals:

- Our rules should use the defined collective term "person under disability", meaning a minor or a person who is unable to make reasonable judgments in respect of matters relating to a claim, including a person declared by a court to be a dependent adult. But the definition should not be expanded to include missing persons (unlike the equivalent Ontario rule).

- There should continue to be no requirement for a court to adjudicate mental competence under the *Dependent Adults Act* before a litigation representative can act.

Concerning the people who litigate on behalf of the person under disability, the Committee's proposals are:

- A single descriptive term should be used, perhaps something like "litigation representative", rather than distinguishing between a "next friend" (plaintiff) and a "guardian *ad litem*" (defendant).

- Our rules should adopt the British Columbia approach of allowing a litigation representative of a minor or mentally incompetent person to serve without court appointment, regardless of whether the representative will act as plaintiff or defendant, unless a court orders otherwise, an enactment provides otherwise or the representative is a non-resident.

- The rules should require the representative to file an affidavit demonstrating his or her fitness to act, including evidence of the representative's relationship to the person under disability, a disclaimer of adverse interest and acknowledgement of liability for costs.

- Subject to a contrary court order, priority of acting as a litigation representative should belong to a trustee or guardian appointed under the *Dependent Adults Act* or an attorney under an enduring power of attorney who has authority to act in the litigation.

- Our rules should also specifically acknowledge the court's power to remove or replace a litigation representative.

Certain issues about the conduct of litigation can arise concerning persons under disability. The Committee has the following proposals in this area:

- When a defendant under disability has no litigation representative and the plaintiff knows it, the plaintiff should be required to apply to court for the appointment of a litigation representative.

- The litigation representative should be responsible for preparing the affidavit of records, without the need to obtain a court order under Rule 187.1. As for discovery, the person under disability should be examined if competent to give evidence, but otherwise the litigation representative

should be examined and should have the same duty as a corporate representative to inform him/herself prior to the examination. The evidence could be read in at trial as evidence of the party.

- Our rules should provide that all settlements affecting a person under a disability must be approved by a court, unless a court order under the *Dependent Adults Act* has previously authorized a guardian or trustee to settle litigation or an enduring power of attorney has previously authorized an attorney to settle litigation.

- Currently our rules provide that default judgment cannot be entered against a party under disability without court permission. Ontario's rules also provide similar protective measures for other ways of ending litigation (discontinuance, abandonment, dismissal for delay). The Committee wants to know whether the profession believes such protections are needed in our province?

- We should continue to have Rule 344 that requires payment into court of money recovered on behalf of a person under disability, unless the law otherwise provides or the court otherwise orders. Another similar provision, Rule 182(1), can be deleted as superfluous.

E. Special Rules for Disposition of Minors' Property

Rules 581-583 (Part 45) are specialized rules concerning applications under the *Minors' Property Act*. The General Rewrite Committee concludes that these rules are entirely superfluous and should be deleted. Their effect would be produced anyway from the general rules of court, other statutory requirements and legal practice.

Consultation Memorandum No. 12.5
Management of Litigation

This summary highlights only some of the issues that the Committee discussed and the proposals which it has made. The complete discussion of all issues and Committee proposals is contained in the consultation memorandum. Once we receive feedback from the legal community on the wide-ranging proposals contained in this consultation memorandum, the Committee will address the specific Rules and Practice Notes on case management and pretrial conferences in the final recommendations.

A. Is Change Necessary?

Lawyers have a responsibility by virtue of their special role and expertise in the civil justice system to make informed and constructive contributions to improving that system. Alberta is no different from other jurisdictions in needing strategies and mechanisms to assist in modernization of the system to accommodate growth in numbers of cases, the consequences of lack of financial resources and other support for the judicial system, and the impact of technological changes. Support was received from the Alberta Bar in the legal consultation process for change and for new approaches to the management of litigation.

Each year the number of cases being handled by the justice system increases. About 98% of the more than 50,000 cases filed annually resolve at some point before trial, yet the justice system is geared toward the hearing of trials, rather than to supporting efforts at earlier resolution. Civil trials almost invariably take place 2 or more years from the date of commencement, and often several years longer, depending on the type of case. Some measures introduced to assist the parties, such as pretrial conferences, have resulted in further delay, as judicial resources cannot always be made available to accommodate the parties when they are ready for a pretrial conference.

The Committee reviewed the results of introduction of reforms in other jurisdictions: Ontario's reforms, Australia's approach, and the British experience

were all discussed. Caseflow Management, case management "tools", and different approaches to implementation were all considered by the Committee. In practice there is a great deal of overlap and blending of the different approaches, and the Committee recognized that Alberta already incorporates some of the tools of case management, and is a leader in forms of judicial dispute resolution, such as minitrials.

Some of the delays are attributable to the litigants or their lawyers. Currently lawyers have the primary responsibility for the pace of the progress of cases through the judicial system. Systems such as Ontario which have introduced Caseflow Management, have done so partly in response to criticisms of their system that delay has been magnified by lawyers' and litigants' tactical manoeuvres.

The Committee considered that adoption of full Caseflow Management in Alberta would entail a significant shift in legal culture. The Committee felt that any system in Alberta would have to contain as much freedom for individual users of the system as was compatible with the system running smoothly and with as little delay as possible. Concern was also expressed about whether resources would be available and allocated appropriately in Alberta to provide the kinds and types of judicial intervention at intervals that full Caseflow Management implies.

The Committee recommends that changes to the operation of the litigation system in Alberta be considered in order to respond to problems of delay and excessive cost, with a view to creating a "made in Alberta" solution, tailored to local conditions and needs. The traditional system of litigation management should be maintained in Alberta, with the central element of lawyer responsibility for the progress of an action, but certain elements drawn from Caseflow Management systems should be added. Initiatives of the Court of Queen's Bench should be maintained and built upon, while adding additional elements such as time standards and litigation tracks, which may require the courts to reallocate some judicial and administrative resources.

B. Time Standards and Litigation Tracks

The backlog of cases in many Canadian jurisdictions has been contributed to by lack of standards for dealing with cases expeditiously. Time standards can be imposed by requiring disposition within a specified time, or by requiring certain steps to be completed by a certain time. The response from the Alberta Bar was that deadlines should not be arbitrary, nor should they increase the cost of litigation. Lawyers favoured an informal and flexible regime which left them with some discretion.

The Committee recommends that Alberta adopt time standards based on the time required for each step in the action, and that a comprehensive timetable, which can be amended by agreement between the parties, apply to each action.

The Committee also recommends that the Alberta court system have 3 litigation "tracks": simple, standard and customized. The plaintiff would initially choose the track, but if that choice is contested, an application can be made to the court for directions. A Timetable Schedule in the Rules of Court, for each of the standard and the simple tracks, would apply to every action, unless the parties filed a different timetable.

So that the Timetable Schedule does not become a source of delay, the Committee made several recommendations: that disagreements be resolved by application to the court; that time under the schedule continue to run while applications are pending; and that all applications relating to a particular step in an action be required to be filed within 30 days of the completion of that step in the action (for example, applications relating to undertakings would be made within 30 days of completion of Examinations for Discovery).

The Committee decided to seek input from the practising Bar as to when the Timetable Schedule should commence (e.g., upon filing of Statement of Defence; or upon filing of Affidavit of Records, etc.).

C. Shorter Actions

Given that the Committee is recommending a Litigation Track system with a Simple Track for appropriate actions, the Committee seeks input from the legal profession as to whether it seems necessary to retain a separate Streamlined Procedure, or, alternatively, whether the limits on discovery and appeal should be incorporated into the Simple Track.

D. Protocols

Pre-action protocols, which require the exchange of certain information before an action can be commenced, have been adopted in Britain and Australia. In these jurisdictions, they are considered a significant factor in the reduction or elimination of delay. The Committee noted, however, that in Alberta limitations dates are shorter and there is less time for pre-action protocols to take place. Whil pre-action protocols may simply codify "best practice" methods, the Committee agreed that the rules should focus on what happens after an action is commenced and not before that. Introduction of pre-action protocols would be too radical a change in Alberta.

The Committee would like to receive feedback from the legal profession as to whether "action protocols" to govern what happens in an action after the pleadings are filed, based on the best practices available, would be a useful addition to the rules.

Adverse Possession and Mistaken Improvements to Land

In the background material to the *Limitations Act*, the Institute decided to defer a review of the law of adverse possession to a later date. The coming into force of the new *Limitations Act* in 1999 raised several issues regarding adverse possession and the related claim for lasting improvements to land under the *Law of Property Act*. An increasing number of reported cases in recent years makes it additionally appropriate to consider this area of law. Recent reports on adverse possession have also been issued by law reform agencies in England, Ireland, and Australia.

Report 89 considers three closely related claims that arise between an owner of land and certain persons found in possession of the land. The first claim is the owner's right to recover possession. The second claim arises when the owner fails to bring a claim to recover possession within the prescribed limitation period. This second claim, generally referred to as adverse possession, allows the person in possession to quiet title in his or her own name where the owner does not act in time. The third claim typically arises where the owner is still within time to recover possession but to allow the owner to do so may itself cause injustice. Thus, s. 69 of the *Law of Property Act* offers alternative relief where the person in possession has made lasting improvements to the land in the belief that he or she owned the land.

Recognising that disputes concerning the use and ownership of land are inevitable, the Report takes the view that the law should provide an efficient and appropriate mechanism to resolve them, not only to determine the parties' interests in a current dispute but also to prevent the dispute from troubling future owners. Protecting future ownership implies that land can be transferred. Along with these objectives of ensuring transferability and protecting future ownership, the Report adopts a third objective of preventing stale claims.

The Report reviews the development of the law in Alberta and how the courts and Legislature balanced the policy goals of both land titles and limitations legislation. In so doing, the Report identifies a number of misconceptions regarding this area of the law. Most importantly, the Report rejects the characterisation that adverse possession is an exception to indefeasibility under the

land titles system. On the contrary, as the law has developed in Alberta, registered land owners are given four-fold protection against adverse claims: (1) under the *Land Titles Act*, a transfer raising indefeasibility will "wipe-out" any elapsed period of adverse possession; (2) under the *Limitations Act*, an owner with indefeasible title has ten years to recover possession; (3) under the common law, the test for showing that a registered owner has been dispossessed by an adverse claimant is an onerous one; (4) under planning law, the requirement of subdivision approval protects the public interest in the development and use of land where an adverse claim would result in a subdivision. Only in the narrow circumstances where a registered owner falls outside these four layers of protection is it appropriate to consider whether there is any merit in an adverse claim.

In keeping with the stated objectives of ensuring that land remains transferable, protecting the future ownership, and preventing stale claims, the Report makes recommendations to address the issues raised by the *Limitations Act* and to ensure that the law of adverse possession and s. 69 of the *Law of Property Act* operate consistently with each other and advance the policy goals of both limitations and land titles legislation.

Class Actions – Implementation

On May 16, 2003, Bill 25, the *Class Proceedings Act*, received Royal Assent. The Act, cited as S.A. 2003 c. C-16, will come into force on a date to be fixed by Proclamation. Its provisions are based on the recommendations we made in Report No. 85 on *Class Actions* issued in December 2000. In our report, we recommended that Alberta enact modern class actions legislation that is similar to the legislation recommended by the Uniform Law Conference of Canada (ULC). In December 2000, modern class actions statutes had been enacted in Quebec, Ontario and British Columbia. Since that time, modern class actions provisions based on the ULC model have been adopted in Saskatchewan, Newfoundland, Manitoba, the Federal Court of Canada and now Alberta. The *Class Proceedings Act* also responds to the Supreme Court of Canada comment in the case of *Western Canadian Shopping Centres v. Dutton*, decided in July 2001, that a legislative

framework clearly would be advantageous to the historic representative action rule (Alberta Rule 42) which is now in place.

Creditor Access to Future Income Plans

Should registered retirement savings plans (RRSPs), deferred profit-sharing plans (DPSPs) and registered retirement income funds (RRIFs) be exempt from the remedies of creditors? The issue is significant because of the policy questions involved and the large sums of money invested annually in retirement savings plans. The Institute has undertaken a project on the subject. In June, 2002, the Institute published Consultation Memorandum No. 11: *Creditor Access to Future Income Plans*. The memorandum outlines previous studies by the Uniform Law Conference of Canada and the Personal Insolvency Task Force created by the Superintendent of Bankruptcy. It then sets out the principal issues to be decided in any attempt to reform this area of law.

The threshold question raised in the memorandum is whether Alberta law should recognize any exemption of RRSPs, DPSPs and RRIFs from creditors' remedies. If it is decided that some exemption of these plans is justified, the next group of issues asks whether the exemption should be total or surrounded by limits intended to lessen the possibility of abuse, such as a dollar cap, a limit of the exemption to locked-in plans, or a right in the creditor to claw back payments made into the plan shortly before the creditor launched collection proceedings. An alternative is to give the court a discretion to vary or eliminate the exemption when asked to do so by a party to the dispute. Several other issues are raised in the memorandum, including the vexing question of the treatment of RRSPs, DPSPs and RRIFs in the estate of the debtor-depositor. The competition among the beneficiary of the future income plan, creditors of the estate, and creditors of the beneficiary has resulted in conflicting cases in several Canadian jurisdictions.

The Alberta Law Reform Institute distributed the consultation memorandum widely during the summer; it is available on the Institute's website: <http://www.law.ualberta.ca/alri/pdfs/cnslt_memo/cm011.pdf>. The Institute

received many helpful comments on the memorandum. Institute counsel have written two draft reports which have been approved with some changes by the Institute Board and should be published in September, 2003.

E-Commerce

The topic of electronic commerce falls within the jurisdictional portfolio of the Department of Government Services. The Institute, through the Director, has worked closely with that department on the development of a number of initiatives. The first initiative was the enactment of the *Electronic Transactions Act*, R.S.A. 2000, c. E-5.5 and the second was the development of an internet sales protocol intended for passage as part of the regulations under the *Fair Trading Act*, R.S.A. 2000, c. F-2. (*Internet Sales Contract Regulation*, Alta. Reg. 81/2001.)

Enduring Powers of Attorney

In Final Report No. 88, we recommend that the *Powers of Attorney Act* be amended to provide some additional safeguards against abuse of enduring powers of attorney (EPAs).

The *Powers of Attorney Act* allows a donor of a power of attorney to provide either that the power of attorney will come into effect on the donor's mental incapacity or infirmity (a "springing" power of attorney) or that the power of attorney will continue in force despite the donor's supervening mental incapacity or infirmity (a "continuing" power of attorney). It classifies both springing and continuing powers of attorney as "enduring" powers of attorney. Its purpose is to allow a donor to control the decision as to who will look after the donor's affairs if the donor is no longer able to do so.

In order to achieve its purpose, an EPA gives the attorney control over some or all of the donor's property at a time when the donor, by definition, is unable to

supervise the attorney's activities. The great majority of attorneys exercise their control for the donor's benefit, but a small number abuse their powers by misapplying or misappropriating property of the donor. Although small, the number is large enough to require additional safeguards against abuse.

The *Powers of Attorney Act* now provides the following safeguards against the abuse of EPAs:

- an EPA must be in writing and must specifically provide either that it is to continue notwithstanding any mental incapacity or infirmity of the donor that occurs after the execution of the power of attorney, or that it is to take effect on the mental incapacity or infirmity of the donor.
- the donor's signature must be witnessed.
- if the donor does not designate a person to make a declaration that the donor has become mentally incapable or infirm, the donor's incapacity or infirmity must be established by a written declaration by two medical practitioners.
- an attorney who has accepted an appointment under an EPA has a legal duty to exercise their powers to protect the donor's interests during any period in which the attorney knows, or reasonably ought to know, that the donor is unable to make reasonable judgments in respect of matters relating to all or part of the donor's estate.
- the donor's personal representative or trustee or "any interested person" may apply to the Court of Queen's Bench for an order requiring an attorney acting under an EPA to pass accounts or for termination of the EPA.

In Report No. 88 we recommend that the *Powers of Attorney Act* be amended to provide the following additional safeguards against abuse of EPAs:

- Either
  - a lawyer must sign a certificate that an EPA was signed by the donor on a specified date in the lawyer's presence separate and apart from the attorney and that the donor appeared to understand the EPA, or
  - a witness must swear an affidavit containing the same statements.

- When the donor becomes mentally incapable or infirm and the attorney intends to act under an EPA, the attorney must give notice of intention to act to
  - family members specified by the act whose whereabouts are, or ought reasonably to be, known to the attorney, (other than family members excluded by the EPA); and
  - to any person designated by the EPA to receive notice, the family members and the designated persons being collectively referred to below as "qualified persons").
- The attorney must prepare and keep up
  - a list of property and rights over which the attorney takes control; and
  - and a list of transactions entered into by the attorney that involve the donor's property or rights.
- The attorney must allow qualified persons to inspect the EPA and the property and transaction lists at reasonable intervals and to make copies.
- If the attorney does not allow a qualified person to inspect the EPA and the property and transaction lists, the qualified person may ask the Public Trustee to direct the attorney to produce them, and, if the attorney does not comply strictly with the Public Trustee's request, the Public Trustee or the qualified person may apply to the Queen's Bench for an order requiring the attorney to produce them.

It is our opinion that, with these additional safeguards, the *Powers of Attorney Act* will strike a proper balance between

- the interests of individuals in being able to appoint a trusted person of their own choice to administer their affairs on mental incapacity with the least cost and embarrassment, and
- the interests of individuals in having reasonable safeguards against abuse of the powers given to attorneys.

Family Law Reform Project (Review of Domestic Relations Act)

On May 14, 2003, the government introduced Bill 45, the *Family Law Act*, in the Legislative Assembly of Alberta. If enacted, Bill 45 would modernize and consolidate in a single family law statute the substantive family law provisions now found in the *Domestic Relations Act* (Alberta's principal family law statute), the *Parentage and Maintenance Act*, Part 3 of the *Provincial Court Act* and the *Maintenance Order Act*. Consultation on the contents of the Bill is under way.

Bill 25 contains provisions based on the recommendations contained in several of our publications:

- Report No. 65 on *Family Relationships: Obsolete Actions* issued in March 1993;
- the boxed set of Reports for Discussion (RFDs) issued in October 1998: RFD 18.1, *Overview*; RFD 18.2, *Spousal Support*; RFD 18.3, *Child Support*; and RFD 18.4, *Child Guardianship, Custody and Access*;
- several related ALRI publications: Final Report No. 83, *Division of Matrimonial Property on Death* (May 2000); Final Report No. 78, *Reform of the Intestate Succession Act* (June 1999); and Report No. 53, *Toward Reform of the Law Relating to Cohabitation Outside Marriage* (June 1989); and
- a formal response to the Alberta Justice consultation on its project, Alberta Family Law Reform 2002 posted on our website at <http://www.law.ualberta.ca/alri>.

Marshalling Rules

Report for Discussion No. 19 was completed in September of 2001. The recommendations will be included as part of our Succession project, and the review of the *Administration of Estates Act* (see Final Report No. 78).

Matrimonial Property Act

The Institute has done some preliminary consultation with members of the Alberta family law bar and has ascertained that there is a need to look at several issues arising from the *Matrimonial Property Act*, which has not been substantially reformed for almost 25 years. Significant issues include whether the Act should apply to common law couples; whether property should be valued as of date of separation or date of trial; defining "matrimonial property;" addressing matrimonial debt; addressing corporate assets and adding corporations as parties to matrimonial action; adopting a process which allows a court to appoint an independent valuator if the parties cannot agree on the value of property.

Rules of Court

The Rules Project is a continuing project which is undertaking a major review of the Alberta Rules of Court with a view to producing recommendations for a new set of Rules in 2004. The Project is funded by ALRI, the Alberta Department of Justice, the Law Society of Alberta and the Alberta Law Foundation, and is managed by ALRI.

The Rules of Court have not been comprehensively revised since 1968. There is a need for rewriting that has arisen over this lengthy period. Further concerns have been raised about delay, expense and complexity associated with civil court proceedings, so that rethinking of the rules and court process is also in order.

Overall leadership and direction of the Rules Project is the responsibility of the Project Steering Committee.

The first stage of the Rules Project involved a broad consultation with the legal community (see the Report on the Legal Consultation available on the

website, <http://www.law.ualberta.ca/alri>) and the public (reports on the public consultation and focus groups also available on the website).

The second stage of the Project involves the development of initial policy proposals for new Rules, and further consultation regarding those proposals. This part of the Project has been delegated to a series of working committees. The working committee structure reflects the "rewriting" and "rethinking" objectives of the Rules Project, and ensures that specialized topics are reviewed by persons with relevant experience. The first to commence were the General Rules Rewrite Committee and the "Rethink" Committees dealing with Early Resolution of Disputes, Management of Litigation, and Discovery and Evidence. Specialized areas of practice are now being reviewed by committees dealing with rules relating to the Enforcement of Judgments, Appeals, Costs, Judicial Review and Criminal Practice.

In the 2002-2003 year the Rewrite and Rethink Committees published the consultation memoranda listed below. Executive summaries for these are included with this report. Working committees in joint session with the Steering Committee have also reviewed comments received on Consultation Memoranda 12.1, 12.2, 12.3 and 12.4.

No.	Title	Date of Issue	Date for Comments
12.1	Commencement of Proceedings in Queen's Bench	October 2002	January 31, 2003
12.2	Document Discovery and Examination for Discovery	October 2002	January 31, 2003
12.3	Expert Evidence and "Independent" Medical Examinations	February 2003	May 16, 2003
12.4	Parties	February 2003	June 2, 2003
12.5	Management of Litigation	March 2003	June 30, 2003

Standardized Limitation Periods for Actions on Insurance Contracts

In January 2002 the Institute published Consultation Memorandum No.10: *Standardizing Limitation Periods for Actions on Insurance Contracts*. Currently there are different limitation periods for bringing actions against insurers for breaching the terms of insurance policies. Different limitation periods are found i the *Insurance Act*, the *Limitations Act*, and in the contractual terms of insurance policies. The limitation period also is dependant upon the nature of the peril whic is insured. Having reviewed comments received during consultations, we will be publishing our final report in the Fall of 2003. We will recommend that limitation periods for actions on insurance contracts should be standardized and be subject t the *Limitations Act*.

Succession Consolidation

We published our Final Report No. 87, *Report on a Succession Consolidation Statute*, in December 2002. The report identifies all existing Alberta statutes and statutory provisions concerning succession. It then advocates the consolidation of the core succession statutes into one Act to promote accessibility and ease of use of our statutory law. Principles of selection are developed and applied to determin which statutes and provisions should be consolidated. The report also recommend that the consolidated statute implement all the recommended reforms of successio law advocated in ALRI reports since the late 1980s.

Title Insurance

The Manitoba Law Reform Commission has received a reference from the provincial government relating to Title Insurance. Since this topic has common issues across Torrens jurisdictions we have agreed to work on a cooperative project with the Law Reform Commissions of Saskatchewan and Manitoba. The Manitoba reference is available on <http://www.gov.mb.ca/justice/mlrc/>.

Uniform Enforcement of Judgments Act & Court Jurisdiction and Proceedings Transfer Act

The Uniform Law Conference has now completed its work on Enforcement of Foreign Judgments and a draft act and commentary was approved at the August annual meeting. This completes the work of the Conference in jurisdiction and enforcement. The completed package consists of: Court Jurisdiction and Proceedings Transfer; Recognition and Enforcement of Canadian Decrees and Judgments; Recognition and Enforcement of Foreign Judgments.

The composite package will now be adapted to the Alberta context with a view of legislative enactment in Spring 2005.

Wills Act

As the next phase of the ongoing Succession Project, ALRI will review the *Wills Act* and make recommendations for reform of this important area of succession law. Virtually every aspect of the law of wills is to be examined, including issues dealing with execution, revocation, alteration, interpretation, lapse, disclaimer, ademption, gifts over and residue. The management plan and work plan for this project will be in place by late 2003; research and preparation of recommendations will commence in 2004.

It is hard to describe the year without first referring to the Rules Project – a major focus and in many respects, a dominant theme of our activities in this year.

In sheer size, the project is the largest ALRI has taken on – $2.6 million over a three-plus year period. Operationally, it is much more complex than the dollar figure and time span.

In order to divide the scope of the work into manageable pieces, we have created a large number of working committees. The Steering Committee has responsibility for the overall project, as well as several topics which span other discrete areas. The General Rewrite Committee takes on all topics not assigned to any other working committee. Other working committees have dealt or are dealing with Early Dispute Resolution, Management of Litigation, Discovery and Evidence, Judicial Review, Costs, Enforcement of Judgments, Appeals, Criminal Rules, with others to follow. Areas such as Insolvency and Surrogate Rules will be dealt with on an ad hoc basis.

The process for each working committee has been as uniform as possible. Normally a working committee is co-chaired by two Queen's Bench judges, and is populated with subject matter and practice experts, who represent the broad spectrum of experience and the geography of the province.

Based on our rollout of the project, and the public and legal community issues papers, we have compiled a database of suggestions and comments. These are divided into subject matter and are provided to each working committee and updated as the database grew. Since the consultation memoranda have been issued by the various committees, we have discontinued the updating of the general database and the comments have been integrated into the final reports of the committees.

Each working committee receives a collection of background research consisting of material from all Canadian provinces, representative jurisdictions from around the world, and specific areas of recent rules activity in the subject

area. A tentative issues list is the first order of business for each working committee.

Each working committee is supported by an ALRI lawyer, who along with co-counsel creates the research knowledge for the working committee and drafts the various reports. Each working committee produces one or more consultation memoranda which are circulated for comment. After the comments are analysed, the recommendations are revised and translated into a series of policy directions.

The process is thorough and comprehensive. It is also intense, time-consuming, and demanding. The expectations for reform are high, as are our own hopes and standards.

The logistics of creating, arranging, and supporting this effort are demanding for both our legal staff and support staff. Turnaround times are relatively short and the frequency of working committee meetings (normally on a monthly cycle) creates its own rhythms.

We have learned much about the organization of meetings, the decision-making process, and the progression of materials from research memo through to final recommendations.

So far we have had 80 working committee meetings, produced 12 publications, and given 45 presentations to groups and organizations. We have conducted two focus groups for the public and produced a database of 288 pages of comments and suggestions. Everyone of our staff is involved, as are our contract and seconded personnel. The impact on our program and resources is significant, and the pressure is constant and immense. We have made the start, but are in the middle laps of the race, where endurance and pacing are critical, before the drive to the finish can be commenced.

Three years ago, ALRI carried out a major review of how it selects its projects and how it manages them to completion. That effort, and the results of a critical assessment of our proposal, has resulted in an improved and more

transparent and predictable work pattern. One significant achievement is that the process changes have been incorporated fully into our operations, and they have been extremely beneficial as the rules project has unfolded. Without our Project Management Guide, the knowledge contained in it, we could not have planned the Rules Project as we have.

We have also benefited from the existence of our Calgary office at the University of Calgary. Establishing a satellite office always involves communication and cost issues, but those have been more than offset by the ability to have a greater presence in the Calgary community, especially in the ability to service the demands of the Rules Project consultation requirements.

Finally, a challenge has been to maintain a reasonable program at the same time as the Rules Project. We have produced final reports in Succession, Enduring Powers of Attorney and Adverse Possession, and will shortly publish others dealing with Limitations Periods for Actions on Insurance Contracts and Future Income Plans.

The year has been full and productive. The Board and Staff are to be heartily thanked for their dedication. (See page iii for a full listing of Board, Staff, and Research Assistants.) Details of the volunteers on our various working committees can be found on our website: <http://www.law.ualberta.ca/alri>.

Peter J.M. Lown, Q.C.
Director

	FINAL REPORT	ENACTMENT
1*	Compensation for Victims of Crime (1968)	Criminal Injuries Compensation Act, S.A. 1969, c. 22 (now Victims of Crime Act, R.S.A. 2000, c. V-3).
2*	Powers of Personal Representatives to Grant Options (June 1969)	An Act to amend The Wills Act, 1960, S.A. 1970, c. 114 (now Wills Act, R.S.A. 2000, c. W-12, s. 30). An Act to amend The Devolution of Real Property Act, S.A. 1970, c. 114 (now Devolution of Real Property Act, R.S.A. 2000, c. D-12, s. 12).
3*	Occupiers' Liability (December 1969)	Occupiers' Liability Act, S.A. 1973, c. 79 (now R.S.A. 2000, c. O-4).
4*	Age of Majority (January 1970)	Age of Majority Act, S.A. 1971, c. 1 (now R.S.A. 2000, c. A-6).
5*	Guarantees Acknowledgment Act, R.S.A. 1970, c. 173 (October 1970)	Principal recommendation for retention of Guarantees Acknowledgment Act (now R.S.A. 2000, c. G-11) accepted. Recommendations for incidental amendments not acted upon.
6*	Rule Against Perpetuities (August 1971)	Perpetuities Act, S.A. 1972, c. 131 (now R.S.A. 2000, c. P-5).
7*	Joinder of Divorce Proceedings with other Causes of Action (August 1971)	Alberta Rules of Court, Rule 563(3), Alta. Reg. 315/71.
8*	Assignment of Wages (October 1971)	Wage Assignments Act, S.A. 1972, c. 61 (now Fair Trading Act, R.S.A. 2000, c. F-2).
9*	Rule in *Saunders* v. *Vautier* (February 1972)	The Attorney General Statutes Amendment Act, 1973, S.A. 1973, c. 13, s. 12 amending the Trustee Act (now R.S.A. 2000, c. T-8, s. 42).
10*	Powers of Maintenance and Advancement (June 1972)	The Attorney General Statutes Amendment Act, 1974 (No. 2), S.A. 1974, c. 65, s. 9 amending the Trustee Act (now R.S.A. 2000, c. T-8, ss. 32, 34, 35, 36(3), 37).

	FINAL REPORT	ENACTMENT
11*	Common Promisor and Promisee: Conveyances with a Common Party (October 1972)	Common Parties Contracts and Conveyances Act, S.A. 1974, c. 20 (now Law of Property Act, R.S.A. 2000, c. L- 7, ss. 10-13; Land Titles Act, R.S.A. 2000, c. L-4, ss. 68, 69, 119).
12*	Expropriation (March 1973)	Expropriation Act, S.A. 1974, c. 27 (now R.S.A. 2000, c. E-13).
13*	Judicature Act, Section 24 (August 1974)	The Attorney General Statutes Amendment Act, 1974 (No. 2), S.A. 1974, c. 65, s. 9 striking out s. 24 of the Judicature Act, R.S.A. 1970, c. 193.
14	Minors' Contracts (January 1975)	
15*	Validity of Rules of Court (December 1974)	The Attorney General Statutes Amendment Act, 1976 (No. 2), S.A. 1976, c. 58, s. 6(4) amending the Judicature Act (now R.S.A. 2000, c. J-2, s. 63).
16*	Rule in *Hollington v. Hewthorn* (February 1975)	The Attorney General Statutes Amendment Act, 1976, S.A. 1976, c. 57, s. 1 amending the Alberta Evidence Act (now R.S.A. 2000, c. A-18, s. 26).
17*	Small Projects (June 1975)	The Workers' Compensation Amendment Act, 1976, S.A. 1976, c. 55, s. 2 (now Workers' Compensation Act, R.S.A. 2000, c. W-15, s. 20); The Attorney General Statutes Amendment Act, 1976 (No. 2), S.A. 1976, c. 58, s. 3 repealed the Bulk Sales Act, R.S.A. 1970, c. 37.
18*	Matrimonial Property (August 1975)	Matrimonial Property Act, S.A. 1978, c. 22 (now R.S.A. 2000, c. M-8), enacting a combination of the majority and minority proposals for the distribution of matrimonial property, and an extension of the recommendations on possession of the matrimonial home.
19*	Consent of Minors to Health Care (December 1975)	

	FINAL REPORT	ENACTMENT
20*	Status of Children (June 1976)	Substantially enacted, pursuant to the recommendations in Report 60 by the Family and Domestic Relations Statutes Amendment Act, 1991, S.A. 1991, c. 11 amending the Domestic Relations Act (now R.S.A. 2000, c. D-14, ss. 50(1), 77-84); the Family Relief Act (now R.S.A. 2000, c. F-4, s. 1(b)); and the Intestate Succession Act (now R.S.A. 2000, c. I-10, s. 1(b)).
21*	Purchase by a Company of Shares Which It Has Issued (January 1977)	The Companies Amendment Act, 1977, S.A. 1977, c. 13, s. 2 (now Business Corporations Act, R.S.A. 2000, c. B-9, ss. 30 and 31).
22*	Residential Tenancies (February 1977)	Landlord and Tenant Act, 1979, S.A. 1979, c. 17 (now Residential Tenancies Act, R.S.A. 2000, c. R-17), based in large part on our recommendations.
23*	Partition and Sale (March 1977)	Partition and Sale Act, S.A. 1979, c. 59 (now Law of Property Act, R.S.A. 2000, c. L-7, ss. 14-19, 20-33).
24	Survival of Actions and Fatal Accidents Act Amendment (April 1977)	Survival of Actions Act, S.A. 1978, c. 35 (now R.S.A. 2000, c. S-27; Fatal Accidents Act, R.S.A. 2000, c. F-8, ss. 5(2)(a), (b), 8; and Limitation of Actions Act, R.S.A. 2000, c. L-12, s. 53).
25	Family Law Administration: the Unified Family Court (April 1978)	
26	Family Law Administration: Court Services (April 1978)	Some recommendations carried out by administrative action.

	FINAL REPORT	ENACTMENT
27	Matrimonial Support (March 1978)	The Domestic Relations Amendment Act, 1977, S.A. 1977, c. 64 (now Maintenance Enforcement Act, R.S.A. 2000, c. M-1), establishing a collection service for support orders which is generally consistent with though different in detail from our recommendations, and providing improved collection procedures which are similar to but in several particulars more stringent than our proposals); The Social Development Amendment Act, 1977 (No. 2), S.A. 1977, c. 92 (now Social Development Act, R.S.A. 2000, c. S-12, ss .14, 15); The Consumer and Corporate Affairs Statutes Amendment Act, 1978, S.A. 1978, c. 49, s. 2 amending the Debtors' Assistance Act (now R.S.A. 2000, c. D-6, ss. 3(2), 3(3), 4(e)-(f), (6)). (Our proposals for change in the substantive law have not yet been implemented.)
28	Tenancies of Mobile Home Sites (April 1978)	Mobile Home Sites Tenancies Act, S.A. 1982, c. M-18.5 (now R.S.A. 2000, c. M-20).
29	Family Relief (June 1978)	
30*	The Builders' Lien Act: Certain Specific Problems (March 1979)	Builders' Lien Amendment Act, 1985, S.A. 1985, c. 14 (now Builders' Lien Act, R.S.A. 2000, c. B-7).
31	Contributory Negligence and Concurrent Wrongdoers (April 1979)	

	FINAL REPORT	ENACTMENT
32	Guest Passenger Legislation (April 1979)	Proclamation 5 July 1979 of previously enacted The Alberta Insurance Amendment Act, 1977, S.A. 1977, c. 76, s. 6 (now Insurance Act, R.S.A. 2000, c. I-3, s. 310) (This is not the principal recommendation of the Report). Gratuitous Passengers and Interspousal Tort Immunity Statutes Amendment Act, S.A. 1990, c. 22, s. 1 amending the Highway Traffic Act (now R.S.A. 2000, c. H-8).
33	Inter-Spousal Tort Immunity (April 1979)	Gratuitous Passengers and Interspousal Tort Immunity Statutes Amendment Act, S.A. 1990, c. 22, s. 2 amending the Married Women's Act (now R.S.A. 2000, c. M-6, s. 2(3)) and s. 3 amending the Contributory Negligence Act (now R.S.A. 2000, c. C-27).
34*	Service of Documents During Postal Interruptions (June 1979)	The Service of Documents During Postal Interruptions Act, S.A. 1980, c. 88 (now Judicature Act, R.S.A. 2000, c. J-2, ss. 43-47).
35*	Defamation: Fair Comment and Letters to the Editor (October 1979)	The Defamation Amendment Act, 1980, S.A. 1980, c. 11 (now Defamation Act, R.S.A. 2000, c. D-7, s. 9).
36*	Proposals for a New Alberta Business Corporations Act (August 1980), 2 vols.	Business Corporations Act, S.A. 1981, c. B-15 (now R.S.A. 2000, c. B-9).
37A	The Uniform Evidence Act 1981: A Basis for Uniform Evidence Legislation (June 1982)	
37B	Evidence and Related Subjects: Specific Proposals for Alberta Legislation (June 1982)	
38	The Uniform Sale of Goods Act (October 1982)	
39	Defences to Provincial Charges (March 1984)	

	FINAL REPORT	ENACTMENT
40	Judicial Review of Administrative Action: Application for Judicial Review (March 1984)	Court of Queen's Bench Amendment Act, 1987, S.A. 1987, c. 17 (now Court of Queen's Bench Act, R.S.A. 2000, c. C-31).
41	Compensation for Security Interests in Expropriated Land (May 1984)	
42	Debt Collection Practices (June 1984)	See generally, Civil Enforcement Act, S.A. 1994, c. C-10.5 (now R.S.A. 2000, c. C-15).
43	Protection of Children's Interests in Custody Disputes (October 1984)	
44	Statute of Frauds (June 1985)	
45*	Status of Children: Revised Report, 1985 (November 1985)	Substantially enacted, pursuant to the recommendations in Report 60 by the Family and Domestic Relations Statutes Amendment Act, 1991, S.A. 1991, c. 11 amending the Domestic Relations Act (now R.S.A. 2000, c. D-14, ss. 50(1), 77-84); the Family Relief Act (now R.S.A. 2000, c. F-4, s. 1(b)); and the Intestate Succession Act (now R.S.A. 2000, c. I-10, s. 1(b)).
46*	Trade Secrets (July 1986)	Draft statute adopted by Uniform Law Conference of Canada, Victoria, B.C., August 1987.
47	Survivorship (August 1986)	
48	Matrimonial Property: Division of Pension Benefits Upon Marriage Breakdown (June 1986)	
49	Proposals for a New Alberta Incorporated Associations Act (March 1987)	Bill 54 (Volunteer Incorporations Act) introduced into Alberta Legislature, June 15, 1987.

	FINAL REPORT	ENACTMENT
50	Prejudgment Remedies for Unsecured Claimants (February 1988)	Civil Enforcement Act, S.A. 1994, c. C-10.5 (now R.S.A. 2000, c. C-15).
51	Proposals for a New Alberta Arbitration Act (October 1988)	Arbitration Act, S.A. 1991, c. A-43.1 (now R.S.A. 2000, c. A-43).
52	Competence and Human Reproduction (February 1989)	
53	Towards Reform of the Law Relating to Cohabitation Outside Marriage (June 1989)	
54	Financial Assistance by a Corporation: Section 42, The Business Corporations Act (Alberta) (August 1989)	Business Corporations Act, S.A. 2000, c. 10, s. 2 (now R.S.A. 2000, c. B-9, s. 45).
55	Limitations (December 1989)	Limitations Act, S.A. 1996, c. L-15.1 (now R.S.A. 2000, c. L-12).
56	The Bulk Sales Act (January 1990)	Miscellaneous Statutes Amendment Act, 1992, S.A. 1992, c. 21, s. 5 (repealed the Bulk Sales Act).
57	Section 16 of the Matrimonial Property Act (March 1990)	Miscellaneous Statutes Amendment Act, 1991, S.A. 1991, c. 21, s. 24 amending the Matrimonial Property Act (now R.S.A. 2000, c. M-8, s. 16).
58	Division of Canada Pension Plan Credits in Alberta (November 1990)	
59	Enduring Powers of Attorney (December 1990)	Powers of Attorney Act, S.A. 1991 c. P-13.5 (now R.S.A. 2000, c. P-20).
60	Status of Children: Revised Report, 1991 (March 1991)	Family and Domestic Relations Statutes Amendment Act, 1991, S.A. 1991, c. 11 amending the Domestic Relations Act (now R.S.A. 2000, c. D-14, ss. 50(1), 77-84); the Family Relief Act (now R.S.A. 2000, c. F-4, s. 1(b)); and the Intestate Succession Act (now R.S.A. 2000, c. I-10, s. 1(b)).

	FINAL REPORT	ENACTMENT
61	Enforcement of Money Judgments, 2 Vols., (March 1991)	Civil Enforcement Act, S.A. 1994, c. C-10.5 (now R.S.A. 2000, c. C-15).
62	Proposals for the Reform of the Public Inquiries Act (November 1992)	
63	Section 195 of the Land Titles Act (February 1993)	Miscellaneous Statutes Amendment Act, 1994, S.A. 1994, c. 23, s. 26 amending the Land Titles Act (now R.S.A. 2000, c. L-4, s. 203).
64	Advance Directives and Substitute Decision–Making in Personal Health Care (March 1993) *(A Joint Report of the Alberta Law Reform Institute and the Health Law Institute)*	Personal Directives Act, S.A. 1996, c. P-4.03 (now R.S.A. 2000, c. P-6).
65	The Domestic Relations Act (DRA) – Phase 1. Family Relationships: Obsolete Actions (March 1993)	
66	Non-Pecuniary Damages in Wrongful Death Actions—A Review of Section 8 of the Fatal Accidents Act (May 1993)	Fatal Accidents Amendment Act, 1994, S.A. 1994, c.16 (now R.S.A. 2000, c. F-8).
67	Transfers of Investment Securities (June 1993)	
68	Beneficiary Designations: RRSPs, RRIFs and Section 47 of the Trustee Act (September 1993)	Miscellaneous Statutes Act, 1994, S.A. 1994, c. 23, s. 46 amending the Trustee Act (now R.S.A. 2000, c. T-8, ss. 8(b), 47(1)(c), 47(3), 47(4)).
69	Proposals for a Land Recording and Registration Act for Alberta, 2 Vols., (October 1993)	Principles adopted in the Metis Settlements Land Registry Regulation (AR 361/91).
70	Mortgage Remedies in Alberta (June 1994)	
71	The Presumption of Crown Immunity (July 1994)	

	FINAL REPORT	ENACTMENT
72	Effect of Divorce on Wills (November 1994)	
73	Revision of the Surrogate Rules (Final Report) (May 1996)	The principal statutory amendments of Report for Discussion 10 anticipating the new rules were enacted in the Miscellaneous Statutes Amendment Act, 1992, c. 21, s. 47. The Rules and Forms were enacted by Alta. Reg. 130/95.
74	Protection Against Domestic Abuse (February 1997)	Protection Against Family Violence Act, S.A. 1998, c. P-19.2 (now R.S.A. 2000, c. P-27).
75	"Last Clear Chance" Rule (August 1997)	Justice Statutes Amendment Act, 2000, S.A. 2000, c. 20, s. 72 amending the Contributory Negligence Act (now R.S.A. 2000, c. C-27, s. 3).
76	Should a Claim for the Loss of a Chance of Future Earnings Survive Death? (December 1998)	Justice Statutes Amendment Act, 2002, c. 17, s. 8 amending the Survival of Actions Act (now R.S.A. 2000, c. S-27, s. 5).
77	Limited Liability Partnerships (April 1999)	Partnership Amendment Act, S.A. 1999, c. 27 (now R.S.A. 2000, c. P-3).
78	Reform of the Intestate Succession Act (June 1999)	
79	Powers and Procedures for Administrative Tribunals in Alberta (December 1999)	
80	Trustee Investment Powers (February 2000)	Trustee Amendment Act, S.A. 2001, c. 28.
81	Occupiers' Liability: Recreational Use of Land (February 2000)	
82	Cost of Credit Disclosure (February 2000)	Insurance Act, S.A. 1999, c. I-5.1, s. 855 and Miscellaneous Statutes Amendment Act, 1999, S.A. 1999, c. 26, s. 8 amending the Fair Trading Act (now R.S.A. 2000, c. F-2, Part 9, s. 66 and 69).
83	Division of Matrimonial Property on Death (May 2000)	

	FINAL REPORT	ENACTMENT
84	Wills: Non-Compliance with Formalities (June 2000)	
85	Class Actions (December 2000)	Bill 25, Class Proceedings Act received Royal Asset in May 2003. Proclamation anticipated for January 2004.
86	Non-Resident Trustees under the Dependent Adults Act (January 2002)	
87	Report on a Succession Consolidation Statute (December 2002)	
88	Enduring Powers of Attorney: Safeguards Against Abuse (February 2003)	
89	Limitations Act – Adverse Possession and Lasting Improvements (May 2003)	

	REPORTS FOR DISCUSSION	NOTE
1*	Protection of Trade Secrets (February 1984)	
2*	Matrimonial Property: Division of Pension Benefits upon Marriage Breakdown (May 1985)	
3*	Remedies of Unsecured Creditors (May 1986)	
4	Limitations (September 1986)	
5	Financial Assistance by a Corporation: Section 42, The Business Corporations Act (Alberta) (August 1987)	
6	Sterilization Decisions: Minors and Mentally Incompetent Adults (March 1988)	
7	Enduring Powers of Attorney (February 1990)	
8	Towards a New Alberta Land Titles Act (August 1990)	
9	Mortgage Remedies in Alberta (April 1991)	
10	Revision of the Surrogate Rules (October 1991)	
11*	Advance Directives and Substitute Decision–Making in Personal Health Care (November 1991)	
12	Non-Pecuniary Damages in Wrongful Death Actions — A Review of Section 8 of the Fatal Accidents Act (June 1992)	
13	Report on Liens (September 1992)	

REPORTS FOR DISCUSSION		NOTE
14	The Matrimonial Home (March 1995)	
15*	Domestic Abuse: Toward an Effective Legal Response (June 1995)	
16	Reform of the Intestate Succession Act (January 1996)	
17	Division of Matrimonial Property on Death (March 1998)	
18	Family Law (October 1998)	
	18.1 Overview	
	18.2 Spousal Support	
	18.3 Child Support	
	18.4 Child Guardianship, Custody and Access	
19	Order of Application of Assets in Satisfaction of Debts and Liabilities (September 2001)	

	ISSUES PAPERS	NOTE
1	Towards a New Arbitration Act for Alberta (July 1987)	
2	Towards Reform of the Law Relating to Cohabitation Outside Marriage (October 1987)	
3	Public Inquiries (November 1991)	
4	Limited Liability Partnerships and Other Hybrid Business Entities (March 1998)	
5	Enduring Powers of Attorney (February 2002)	

	DISCUSSION PAPERS	NOTE
1	Civil Litigation: The Judicial Mini-Trial (August 1993)	

	RESEARCH PAPERS	NOTE
1*	Rent Control; Security of Tenures (November 1975)	
2*	Entry of Landlord; Locks and Security Devices (November 1975)	
3*	Obligation to Repair; Security Deposits (November 1975)	
4*	Termination Procedures; Failure of Tenants to Pay Rent; Overholding Tenants (November 1975)	
6*	Resolution of Disputes; Landlord and Tenant (Advisory) Boards; Distress (November 1975)	
7*	Contract or Property Law; Form and Delivery of Lease; Right to Assign or Sublet (November 1975)	
8*	Mobile Homes (November 1975)	
9*	Consent of Minors to Medical Treatment (May 1975)	
10	Illegitimacy (June 1974)	
11*	Administration of Family Law: The Unified Family Court: Constitutional Opinions (May 1978)	
12*	Statute of Frauds (March 1979)	
13	Matrimonial Support Failures: Reasons, Profiles and Perceptions of Individuals Involved (Canadian Institute for Research in the Behavioural and Social Sciences: March 1981)	

	RESEARCH PAPERS	NOTE
14	Conference Materials, International Invitational Conference on Matrimonial and Child Support, 27-30 May 1981 (October 1982)	
15	Survey of Adult Living Arrangements: A Technical Report (November 1984)	
16	The Operation of the Unsecured Creditors' Remedies System in Alberta (March 1986)	
17*	Corporate Directors' Liability (February 1989)	
18	Report on Referees (February 1990)	The principal recommendation of Research Paper 18 was implemented by Alta. Reg. 308/91.
19	Dispute Resolution: A Directory of Methods, Projects and Resources (July 1990)	
20	Court-Connected Family Mediation Programs in Canada (May 1994)	
21	Recognition of Rights and Obligations in Same Sex Relationships (January 2002)	

CONSULTATION MEMORANDA

1 Division Of Pension Benefits Upon Marriage Breakdown (September 1995)

2 Reasonable Accommodation In The Workplace (November 1995)

3 Business Names Legislation (December 1996)

4 Should a Claim for Loss of Chance of Future Earnings Survive Death? (August 1997)

5 Should a Claim for Punitive Damages Survive Death? (December 1998)

6 Powers and Procedures for Administrative Agencies: Model Code (April 1999)

7 Trustee Investment Powers (September 1999)

8 Wills: Non-Compliance with Formalities (December 1999)

9 Class Actions (March 2000)

10 Standardizing Limitation Periods for Actions on Insurance Contracts (December 2001)

11 Creditor Access to Future Income Plans (June 2002)

CONSULTATION MEMORANDA
Rules Project Series

12.1 Commencement of Proceedings in Queen's Bench (October 2002)

12.2 Document Discovery and Examination for Discovery (October 2002)

12.3 Expert Evidence and "Independent" Medical Examinations (February 2003)

12.4 Parties (March 2003)

12.5 Management of Litigation (March 2003)

PRACTICE MANUALS

Alberta Surrogate Forms

- Integration of rules and forms
- Comprehensive collection of forms
- Computer templates including completion instructions
- User notes

Arbitration Clauses Guide

- Checklists of procedural rules under the Act
- Discussion of sample clauses and agreements
- Complete set of procedural rules ready for adoption

(*Manuals are available from the Legal Education Society of Alberta*)

OTHER PUBLICATIONS

Renovating the Foundation: Proposals for a Model Land Recording and Registration Act for the Provinces and Territories of Canada (A report by the Joint Land Titles Committee – Alberta, British Columbia, Manitoba, The Council of Maritime Premiers, N.W.T., Ontario, Saskatchewan and Yukon) (July 1990)

Final Revisions. Renovating the Foundation: Proposals for a Model Land Recording and Registration Act for the Provinces and Territories of Canada. (A report by the Joint Land Titles Committee – Alberta, British Columbia, Manitoba, N.W.T., Ontario, Saskatchewan and Yukon)
(March 1993)

The Self-Regulation of the Legal Profession in Canada and in England and Wales by W.H. Hurlburt. Co-published by: The Law Society of Alberta and the Alberta Law Reform Institute. (January 2000)

AVAILABLE ON OUR WEBSITE <http://www.law.ualberta.ca/alri>

Alberta Rules of Court Project – Issues Paper for the Legal Community
(October 2001)

Alberta Rules of Court Project – Public Consultation Paper and Questionnaire

Investment by Nonprofit Entities – Feasibility Study
(May 2002)

Alberta Rules of Court Project – Public Consultation Report (September 2002)

Alberta Rules of Court Project – Report on Legal Community Consultation
(September 2002)

Alberta Rules of Court Project – Family Law Issues Paper (October 2002)

Alberta Rules of Court Project – Judicial Review and Administrative Law – Identified Issues (March 2003)

Alberta Rules of Court Project – Focus Group Report (April 2003)

ISSN 0229-6276
ISBN 1-896078-23-0